

THE LIFE OF
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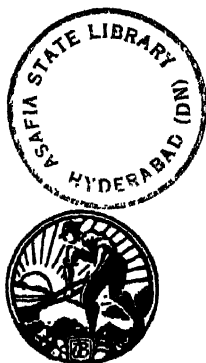
" SIR EDWARD "

Frontispiece

The Life of SIR EDWARD CLARKE

by
DEREK WALKER-SMITH
and
EDWARD CLARKE

Foreword by
The Lord Chancellor
The Rt. Hon. Lord Maugham



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TO

KATHLEEN LADY CLARKE

whose love and care was vital to the subject
of this book, which could never have been
written without her generous assistance
to its authors.

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FOREWORD

I HAVE a vivid recollection of the day when I first saw Sir Edward Clarke. It was one afternoon when, feeling much depressed in spirit with the drafting in the pupil room of a conveyancing counsel of an interminable marriage settlement, I escaped across Carey Street to refresh my mind with a more animated and human view of law. After drawing one or two coverts blank, I managed to get into a very crowded King's Bench Court, in which a counsel, whom I knew at once from his ample and distinctive whiskers, was addressing a jury. Except for his voice, there was an impressive stillness. Everyone was listening with rapt attention, and for myself I was unable to drag myself away. I had heard other well-known counsel during my few visits to the Courts, but my reflection as I listened to Sir Edward Clarke was that never yet had I heard anything that approached him in his incomparable lucidity.

Since that distant day I have listened to and admired all the great advocates of the English Bar, and in later times I have even been fortunate enough now and again to be with them or against them ; and I have read many of the speeches of celebrated advocates of different countries and times, but I can truly say that my first impression remains. No one, at least that I ever heard, surpassed Clarke in the art of holding the attention of a jury, explaining the vital facts, and making his points so clearly that, if the circumstances permitted it, the conclusion seemed to be irresistible. I have referred to the circumstances because I know now—what I did not appreciate when I first entered the Courts—that the powers of the finest advocate in the world are in truth limited. There is only a small percentage of cases in which he can secure a triumph for his client, and then perhaps more often because of the mistakes of his opponent than by reason of his own adroitness, eloquence and skill. The truth of this view will be evident from the pages of this work. Like, I think, the general public, I altogether under-rated in my youth the influence of the Judge in a

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jury case, and did not know how a quiet and unimpassioned judicial summing-up by a master of that difficult art will often destroy the effect of a most marvellous address by counsel, and leave little doubt as to the correct verdict. This is not, of course, to deny that good advocacy is of the greatest importance in a certain number of cases, and that, however unpromising the case may appear, an honest advocate must strain every nerve and spare no pains or personal inconvenience to produce the very best of which he is capable in pleading the case of his client. No one could ever doubt that Sir Edward Clarke did that throughout his life.

This is not the place for an elaborate consideration of the various aptitudes and abilities which together make up the complete forensic advocate. Most people who remember Clarke will bear me out in thinking that in ample measure he possessed them all. No man is perfect, and certainly no advocate that ever lived did not now and then in the course of his career make a mistake in judgment. He may have asked a question of a witness which he should not have asked and thus have elicited a most damaging answer. He may in addressing either judge or jury have said something which on reflection he will recognise to have been most unwise, or perhaps he has embarked upon a topic which he would have done much better to have left alone. So honest have been the chroniclers of this interesting book that the attentive reader will find in it that even Sir Edward, whose discretion as a rule was beyond criticism, is recorded in a very important case to have made a remark which I think must be admitted to have been much better omitted. I will leave it to the junior Bar, who will, I hope, read this book to their advantage, to discover the sentence to which I refer.

I have dwelt only on one side of Sir Edward's varied life ; but perhaps, since it throws a light on his character, I may be allowed to say something of him in another aspect. When I left Cambridge (in 1889) I was in the habit of spending some three months of the summer at Staines, travelling daily up to town to pursue my studies, and

spending many of my evenings on the river. There I met Sir Edward ; and nothing could have exceeded the kindness of the Solicitor-General, a man at the head of his great profession, to a young barrister, unknown, poor, briefless, of course, very shy, and without any claim whatever on his attention. With one or two other young barristers I was a frequent visitor at "Thorncote," on the riverside, and he and Lady Clarke were more than kind to us. Many an evening I can remember we listened in the billiard-room to stories and anecdotes, the fruit of his twenty-five or more years at the Bar, to unpublished sidelights on some of his famous trials, to kindly criticisms of some of his great opponents and to (sometimes) severe criticisms of Judges whom he thought to be unjust. There was much to be learnt on those evenings by would-be advocates like myself. Perhaps I shall be forgiven if I add that he may have seen some promise in me since, when I had acquired only a small practice, he sent his eldest son to me as a pupil (to be followed some years later by his second son), and thus gave me some much-needed encouragement. As I write these lines I have an uneasy feeling that I never adequately expressed my gratitude.

I need not add anything as to his open-handed generosity, nor as to his great independence of mind, nor as to his willingness to make the greatest sacrifice of position and money rather than any sacrifice of his conviction, even if they were of the unpopular kind. The record of his actions in regard to the South African policy in 1889, and his subsequent conduct after his re-election to Parliament in 1906, stand as conclusive evidence of a remarkably strong and high-minded man. These episodes in his life will be found stated with great fairness in this book.

The public sometimes think and speak badly of the Bar. In particular its members are accused of being self-seekers, lacking in principle. If any believing this should speak of it as if it were a universal rule, there need be no hesitation ; it is only necessary to mention the name of Sir Edward Clarke.

MAUGHAM.

CHAPTER I

A GREAT VICTORIAN

EDWARD CLARKE was a great Victorian. Most of the great men who adorned that era—thinkers, scientists, theologians, reformers, men of letters—were great men who happened to live in Victorian times; some of them owed their greatness to the difference between them and their surroundings. But a great advocate cannot run counter to his generation, for his own generation is his judge, and the material with which he works is the lives of those who compose that generation. He cannot rely with praiseworthy optimism upon the verdict of posterity; he must gain it in his lifetime and from his contemporaries. To do this he must have qualities which they admire, if they do not possess, and have an instinctive appreciation of, and acquiescence in, their standards. Unlike the great artist or the great thinker, the mind and temperament of the great advocate must mirror that of his generation.

In Edward Clarke was concentrated much of the strength and many of the limitations characteristic of what is now termed Victorianism. The designation "a typical Victorian" is used by some people as a term of pity and even contempt. However that may be, it is probable that they will find in Edward Clarke many of the characteristics which arouse in them those feelings. He was earnest, and deficient in lightness of touch. His view of life was serious, and incompatible with that gay cynicism so fashionable in the twentieth century. He accepted the standards of his time, and strove to satisfy them, and was neither introspective nor iconoclastic. He believed in the Victorian ideals of progress, religious observance, family life, enlightenment by education, the triumph of reason, and material success. He believed it better to be moral than amusing, and good-hearted than either. What he said often drew applause and sometimes tears, but rarely provoked a smile;

he was too eloquent to be dull, too serious to be flippant. He had more sentimentality than humour, and, having escaped the conventional schooling of middle-class Englishmen, was not ashamed of being demonstrative. He devoted himself to the service of his generation, and from it received the stamp of approval ; to-day he is a figure of the past and his life must be read in the light of the times in which he lived.

If Edward Clarke had many of the limitations typical of Victorianism, he had many of its sovereign virtues. The secret of the success of England in the Victorian era is perhaps to be found more than anything else in its unquestioning acceptance of the adage : " Whatever thy hand finds to do, do it with all thy might." It was an attitude of mind inherent in Edward Clarke. His was not a subtle personality ; there were in it few unexpected elements. But what is unexpected to those who worship the contemporary fetish of specialisation, is the catholicity of his interests, and the comprehensiveness of his range. There is—or at any rate there should be—no matter for surprise in a prominent barrister-politician being a man of deep religious feeling and a devoted Churchman. There is—or there should be—nothing to surprise in his being a keen devotee of the Theatre and friend to the Drama ; or in his being a man of great breadth of reading and of a literary style which, if cultivated earlier, might well have produced work of value : or in his being a man of considerable social charm in any and varied company : of his being ready at all times with advice and assistance to those who needed it : or in his being a devoted family man, whom the preoccupation of an exacting life never prevented from being to wife and family not only husband and father, but lover and friend. Sir Edward Clarke was all this and a good deal more besides. That he was able to be so was due to three of his most characteristic qualities : his energy, his vitality, and his natural interest in things for their own sake.

These three qualities were also characteristic of one of the greatest of Victorian figures, Mr. Gladstone. Clarke in fact resembles Mr. Gladstone, whom he did not greatly admire, much more closely than he resembled Mr. Disraeli,

whose "Coningsby" and "Sybil" first prompted his interest in politics and whose biography many years later he was anxious to write. Circumstances prevented Clarke from having Mr. Gladstone's great scholarship, though as a set-off against this he was free from the tortuous obscurity, which in Mr. Gladstone's case was the unnatural product of his classical training. But in addition to the exuberant vitality, which was the basic attraction of both men, Clarke's rhetorical style resembled Mr. Gladstone's resonant periods rather than the more sophisticated phrase-making of his hero. Clarke's mind too—and with it his approach to politics—was like Gladstone's, that of a practical man and a debater. It lacked the mystical and literary quality which gave Disraeli his peculiar distinction and made him a leader of a generation of which he was never representative.

Clarke was a "Typical Victorian" in the Victorian setting. That setting was one of stability and solid comfort for the successful, and reliance on their own efforts for the humble. To the young Edward Clarke there was no hardship in such reliance, for his was a youthful determination, which would have been as gratifying to Samuel Smiles as the success which subsequently crowned his efforts.

He had the inherent qualities necessary to wring from a competitive world the reluctant tribute of a great career. His parents, themselves offspring of simple yeoman stock, could give him neither wealth nor those useful contacts which greater social eminence would have afforded. But he was endowed with great industry, a powerful memory, natural eloquence, inexhaustible energy and untiring assiduity of purpose. To so formidable a combination of qualities the Victorian era—age of great advocates—yielded its forensic crown.

•

But in spite of his great career and the will to achieve it, it would be as erroneous as it would be uncharitable to dismiss Edward Clarke as an *arriviste* or a self-made man. He had neither the narrowness of vision nor the ruthlessness of execution which is their hall-mark. He had, on the contrary, a high standard of honour and a genuine devotion to principle, coupled with a great generosity of nature, which

rendered the outlook of the careerist impossible to him. Thus it was that, though his life's ambition and the intended goal of all his legal endeavour was a great political career, he did not hesitate first to prejudice it gravely by disagreement with his Party on the Boer War and finally to destroy it by dissenting from Mr. Chamberlain's views on Protection. He made nearly half a million in earned income at the Bar, but as the result of his unhesitating generosity he left a sum very small by comparison. He was for years at the head of his profession ; but he did not hesitate to return lucrative briefs to undertake without fee the defence of those in whom he believed or to whom he felt a chance was due. He did these things because he never accepted success as an absolute criterion nor would have welcomed riches based on a cold and calculating avarice. He strove for success ; he rejoiced in its attainment ; and, like so many of his generation, he never doubted its power to satisfy provided it was honourably come by. The fact that he so valued it made it the harder to relinquish ; but if he thought it right, his nature, determined to the point of obstinacy, did not admit of hesitation. His ambition was high but his principles were higher. His will to power was strong, but his devotion to what he conceived his duty stronger.

Was Edward Clarke's career a success ? In answering the question we are faced with the familiar paradox, common in the lives of the eminent, that that which seems so successful and so enviable to the observer is often accounted by the subject himself as failure. The outsider is struck by the long ascent already made ; to the climber it is those last few rungs beyond his reach that count. A man's success can be measured either by the volume of his achievement or by the extent to which it satisfies his original ambitions. In the light of this second test a Chancellor, who had aspired to be Prime Minister, might be said to have failed, though as regards achievement he would no doubt have attained success. Thus with Edward Clarke nobody could question the great achievements of that brilliant half-century of forensic triumph, strikingly evidenced as it was by the magnitude of its fees, the gratitude of his clients

and the popular esteem in which he was universally held. But there was in his case no simple upward graph of success. His early struggles were rewarded by the great position he quickly attained at the Bar and in Politics ; but then came disappointment and the necessity for renunciation. The political distinction, to which he had always aspired, and the high judicial office, which he later desired in default of the other, were alike denied him ; he finished, as he had begun, a private member of the Bar. But between the beginning and the conclusion lay fifty years wide in range, rich in interest, and striking in incident. In that period he had saved many from the sharp agony of the gallows and from many more he had lifted the long shadow of disgrace : he had defended London's most successful playwright and examined her future King : he had cast his personality over that long chain of *causes célèbres* which formed so large a part of the social history of his day : in advocacy at once effective and dramatic he had long been *facile princeps*. No wonder that in his speech of farewell he said : " There has been no failure and I have no reproaches or regrets ! "

But had there been failure Clarke would still have met it with philosophy. It is only mean or narrow men, with no inner resources to support them, who are crushed by the appearance of failure. Clarke had inner resources to console him as deep as his interests were wide. He was no mere apostle of glittering prizes, although his frank and exuberant nature never affected to despise them. If politically he was somewhat of a failure, that failure left him free for the continuance of that for which his chief talent lay, the pursuit of advocacy. Here his pre-eminence was indisputable, but like most lawyers in politics, he had nothing to contribute to political philosophy. He was a man of strict fidelity to principle and great energy in their support ; but his was not an original mind in the sphere of thought. It is not in the realm of ideas that his importance or his interest lies ; it is in the field of action. In his long life he was always magnificently and unchallengeably alive, and his personality and his achievements survive in consequence into a new age.

CHAPTER II

CHILDHOOD AND THE BIRTH OF AMBITION

THE history of Edward Clarke's family is respectable but obscure. His roots were in the Somersetshire village of Axbridge, where his forebears lived for several generations as small yeomen. Towards the end of the eighteenth century the tempo of English life changed somewhat so that those who were not prepared to move ahead were compelled to drop back. The pleasant English occupation of staying as you were fell out of fashion. So it was that the Clarke family found their fortunes to be on the decline, and they could no longer subsist upon the patrimony at Axbridge. One son did the traditional thing and went to Australia to seek his fortune. What is more surprising is that he found it, and ended up not only a millionaire but the first Australian baronet.

The other son, however, was less adventurous and left Axbridge to move only as far as Bath. Before he left Axbridge he had married and there at the turn of the century his only son was born, who was to be Edward Clarke's father. The father was employed in an hotel at Bath, but was anxious for his son to do better. In consequence, he apprenticed him to the firm of Payne's, well-known Bath silversmiths. But the young Clarke was anxious to try his fortune in the Metropolis, and on the conclusion of his apprenticeship he came up to London and, after a short period with a firm in Oxford Street, he moved into a shop by St. Paul's in the City. While he was there he went down to Bath to marry the girl to whom he had been for some years engaged. Her name was Frances George, and she was the daughter of a Bath business man, who had died some years previously. On her father's death she helped her mother to manage the local branch of the Society for the Promotion of Christian Knowledge,

a part for which she was eminently fitted by the seriousness of her disposition. It may be supposed, however, that it was not so much the serious bent of her nature as her undeniable beauty and the goodness which went with it, which attracted Mr. Clarke, who was a man of pleasantly carefree character.

The pair had not been married long before the husband decided to open out into a business venture of his own, and so took premises in King William Street in the City. The shop was small and stood between an ironmonger's and a furniture shop, both of them somewhat larger than the small frontal space which bore the name of Clarke above it. Here the Clarks not only pursued their business on the ground floor, but lived and had their domestic being on the first and second floors. The ground floor consisted solely of the shop, which was stocked with such silver as Mr. Clarke's modest capital had enabled him to acquire. The other two floors contained only two rooms each, and though they were fairly spacious, they provided but narrow accommodation for the household which was soon accumulated there. The Clarks brought two baby daughters with them to King William Street. Their arrival was shortly followed by the birth of their eldest son, and in the next few years three more children were added to the family. Of these, the eldest boy, born on February 15th, 1841, was Edward Clarke.

It can be seen from this that the childhood of Edward Clarke was not cast in opulent circumstances or against a spacious background. Indeed, it must have taxed all the ingenuity of his parents to house all the children, together with cook, maid, and apprentice in the limited space at their disposal. Manage they did, however, and made a very good job of it. It was not that the father's fortunes grew. He was not endowed with those qualities of drive and resolution which would have enabled him to expand his business in those days of rapid commercial development. He was one of those agreeable men, who have an unruffled optimism with regard to their responsibilities and are capable of a pleasant detachment from the cares and

troubles of this world. Such a man is a delightful companion and can readily be forgiven any of his shortcomings by the world at large because of the apparent and infectious charm of his disposition. It is sometimes the case that the dependants of such a man, while appreciating his virtues and his pleasant characteristics, wish for a more robust, material sense, which can be relied on to free them from care in their turn. In the case of the Clarkes this feeling never arose because Edward was from an early age in the real position of head of the family. Thus it was that the relationship between father and children—and especially between father and elder son—was never clouded by that feeling of material dissatisfaction which, unadmitted but irrepressible, so often intervenes to spoil the harmony of that relationship.

Edward's mother resembled his father only in one respect : she, too, was possessed of considerable inherent goodness. But whereas his goodness was of a quiet and latitudinarian kind, hers was of a stronger and more apostolic variety, as befitted one who had helped to organise the Society for the Promotion of Christian Knowledge. She was, in fact, a Puritan, who was not afraid to set high standards of conduct and of asceticism, to which she strictly adhered herself and expected others as faithfully to follow. She had a keen and admirable sense of duty, but no *joie de vivre* to temper and sweeten it. She did not share, and indeed she disapproved of, the interest of her husband and her son in the Shakespearean Theatre. With them it was very rarely indulged, and to the rest of the family, as to the mother, it had to remain an uncharted sphere. Her tastes were extremely serious, and unfortunately not only was frivolity banished but her sympathetic understanding of human nature was somewhat curbed in consequence. In later years she vigorously opposed her son's marriage, and great as Edward's respect and affection for her was, the obstinacy which she had displayed on this occasion dealt a blow to the intimacy between them.

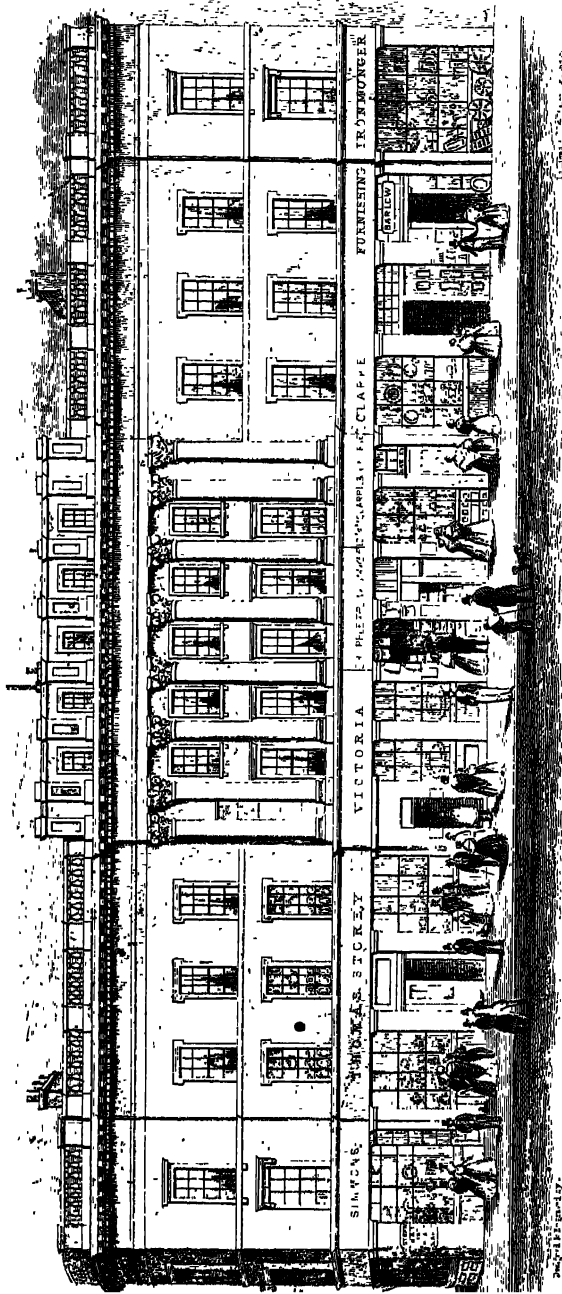
But Edward Clarke was right to entertain feelings of admiration and affection for his mother. For whatever her

limitations, it was her strength of purpose and unselfish devotion to her family which kept the Clarkes in the position that they held. Had the father married a wife of no greater determination than his own, the Clarke family, with their slender income and cramped surroundings, must inevitably have drifted and declined. The education which the children were able to get—and its advantages could have been given by no subsequent resolution on their part—was only made possible by the practical ability and the high-mindedness of Frances Clarke. Her marriage was one to which both parties brought widely differing qualities, and it was the good fortune of their eldest son to inherit the best qualities of both. From his mother he had that devotion to duty and assiduity of purpose which steeled and equipped him for the attainment of his great career; from his father he had the cheerful interest in things for their own sake, and the frank affection for his fellow men, which made him not only a successful man but a much loved one. In him resolution was tempered by natural charm, and amiability of temperament reinforced by strength of will.

Edward Clarke's childhood was spent largely within the narrow framework of the house above the shop in King William Street. Occasionally there were expeditions and excursions, but for reasons both of economy and of his mother's views, these were the exception rather than the rule. Most of his childhood pleasures had to be found at home. The parents were musical, and singing and the piano occupied many of the evenings. But to Edward the pleasure of music was always subordinate to the delight of reading. From a very early age he discovered the joys of reading, and would spend long hours immersed in his history books. His chief friend and confidante in the family was his eldest sister Fanny, four years older than he, and the ideal elder sister. Clever, studious, unselfish and sympathetic, she was the obvious person for young Edward to trust with his secret hopes and ambitions. His letters to her are in fact the chief source of information about him in his 'teens. One of them, written to her when he was

nineteen, defines his attitude: "You are of the two of my correspondents to whom it is most easy to write, as I can speak of everything I do or think with the certainty of a loving sympathy." His sister Madgie, two years older than he, was a cripple, and naturally cut off from much active participation in life. Her chief occupation was needlework, at which she became very expert. With her Edward never had the same intimacy of relationship that he had with Fanny. Neither of them ever married, but Edward was able to place them beyond the reach of care in after years.

The question soon arose as to where this studious boy was to go to school. The hoped-for nomination at Christ's Hospital not materialising, it was decided to send him to one of the Merchant Taylors' Schools. It was then found that his delicate health forbade this, and it was decided that country air was necessary to build up his constitution. To get this, one finds with some surprise, he was despatched to school at Edmonton; and nothing shows more clearly the great gulf fixed between the London of the 1850's and the London of to-day, than the fact that country air could be sought in what has become such a very urban neighbourhood. In point of fact he was able to get country air in Edmonton, and the two years he spent there gave him a good health which he had not previously possessed. It was fortunate that he was able to get this, as in other respects his career at Edmonton was not an unqualified success. Like many clever boys, confident in his own abilities and anxious for distinction, he found the masters unsympathetic and narrow. His two years contained several conflicts with authority and a considerable amount of corporal punishment. The consequence was that he left Edmonton with the disturbing consciousness that he had not been a success and that his failure had greatly grieved his mother, the rigidity of whose mind could not appreciate the reason for the difficulty. Consequently, he had to console himself as best he could with what he had brought away—good health and friendships among the boys, one of which, with Robert Pottle, was destined to



King William Street-View.

last for fifty years. His love of reading also attracted the notice of the English master, who taught him something of recitation and elocution. And so it was that at the annual play of the school, the small, pale-faced boy of ten recited Othello's address to the Senate.

The effect of the failure at Edmonton was to convince his mother that he must attend a day school. One sufficiently accessible was to hand in Lombard Street. This was the City Commercial School, kept by a delightful and genial scholar called William Pinches. For six pounds a year a very good elementary education was to be had, though without the embellishments of Latin and Greek, which were the staple commodity of public school instruction. In William Pinches, Clarke found not only a tutor but a friend, whose son Edward Pinches became his best friend in an association which lasted through school, the Temple and politics for over half a century. Here Clarke was very happy, and was a success in the varied life of the school. The sphere in which he made his greatest mark was in that of elocution, and for three years in succession he gave the chief recitations at the school's annual Christmas entertainment. His headmaster used to congratulate him on the merit of his performances, but preferred the past recitations of a former paragon of the school called Brodribb. Clarke's youthful vanity was rather hurt by this preference, but he became reconciled to it in later life, for by then Brodribb had acquired universal fame as Sir Henry Irving and had become a close friend of his own.

Unfortunately, the pleasant and industrious ritual of school life was not in his case to be prolonged. The financial obligation of educating the three younger children demanded his presence to assist his father in the shop. So at Christmas of 1854 he left the school and in the New Year entered the shop while still only thirteen. Here his work was not very arduous, and allowed him considerable time for reading. The small extent of the business had for him the compensation that there were few customers and lengthy intervals between their visits. This left him abundant leisure, and Shakespeare and Gibbon provided a solid basis to a course

of reading which also included Scott and the fashionable novelists of the day. He was able in this way to keep his cultural interests alive, with the support of his mother, who was anxious that he should be allowed to read as much as possible.

Haphazard reading of this sort, however, could not have taken the place of a proper education. But it so happened that he was able to supplement his reading by attendance at the evening classes, which had lately been started in the City. For a guinea a year he attended at Crosby Hall, in Bishopsgate Street, where history and other subjects were taught to those who desired to learn. In addition to the classes there was the Society of Arts Examination, open to all who attended evening classes. In this he competed in 1856 and had the reward of winning a prize of ten guineas for the best paper in English Literature.

The evening classes played a considerable part in his life at this time, as he not only attended the lectures there, but also took part in the debates held at the Crosby Hall Discussion Society. Here his training in elocution and his wide reading held him in good stead and he soon became one of its star performers. There was, too, the social side of the Hall's activities, taking the form of annual excursions, dances and the like. At one of these he met the cousin of one of his fellow students, a dark, pretty girl called Annie Mitchell. On the first occasion of their meeting Edward Clarke formed a resolution to have her for his wife. Many years were to pass before this desire was finally attained, and many obstacles were to be overcome; but the course of his life at this time was guided by the desire for it and his efforts were inspired by the will to clothe his aspiration with reality.

The success in the Society of Arts Examination in 1856 was repeated in 1857 and again in the following year, when Oxford University held an outside examination for the degree of Associate of Arts. To sit for this examination he went to Oxford, with which he was greatly delighted, and acquitted himself with such credit that he was placed first of all the competitors, thus becoming the first Associate

of Arts in the University of Oxford. This examination success was soon followed up by a still more substantial one. The idea of the career open to talents was then gaining ground and it was decided in that year to hold the first open examination for clerkships in the India Office. The salary, which with allowances would approximate to £150 a year, drew many hundreds of candidates to compete for the eight positions vacant. The occasion was a heaven-sent opportunity for a young man possessed of great capacity for success in examinations and anxious to better his situation. Edward Clarke naturally entered his name, and gave himself up whole-heartedly to preparation for it. The examination was duly held, and revealed an enormous divergence between the abilities of the candidates, the more lowly placed of whom collected some surprisingly small percentages in all the papers. Clarke's diligence, memory and literary style were rewarded by his being placed seventh in the list and gaining a place in the India Office.

The days in the shop were now left behind, and his future was assured. The India Office gave him complete security of tenure and a rising salary, which would be substantial compared with the standards that he had known. Well might his mother and friends think that the active struggles of his life were already over, and that it merely remained for him to satisfy the none too exacting requirements of the India Office. But in Edward Clarke himself was already born the idea that if he had accomplished so much at the age of eighteen, it must lie in him to accomplish more. As a child, devoted to the reading of history, the thought had naturally occurred to him of the desirability of being able himself to play some part in public life and in the moulding of the history of the future. In those days, however, politics were in the main considered to be the preserve of the well-to-do, and it was not clear how a young man in his modest position would ever be able to storm the gates of privilege. The solution came one day when he was fortunate enough to secure a ticket from Lord Derby for a debate in the House of Lords in which Lord Lyndhurst, veteran friend of Disraeli and former

Conservative Chancellor, was to speak. The respect paid by his fellow peers to the octogenarian lawyer and the attention given to his words was not lost upon young Edward Clarke. Here, at the peak of success and of recognition, was a man who, like himself, had started without the advantages of birth, wealth, or position. He had made his way to politics through the avenue of the law. What was possible for him might be possible for Edward Clarke by the same means. Thus was Edward Clarke's mind first turned to the possibilities of the Bar as a potential career.

Meanwhile, he was a clerk at the India Office, and his first obligation was to discharge his duties there. He did not, however, allow this to monopolise his whole attention. The work at the India Office was in fact monotonous, and left him with the desire for other activity. One form which this took was attendance at King's College, where he matriculated in their course of evening classes. In their examinations, too, he acquitted himself with his customary credit, though in his letters to Fanny we find that he made "a mess of the Anglo-Saxon grammar, which I have not had time to get up thoroughly"; in Latin and Greek he got on as well as he expected, which was very poorly. But nothing damped his high spirits: "It was so satisfactory to have the examinations over that I first executed a sort of war dance in front of the College, to Brodribb's astonishment, then tried to drag that meek and highly-gifted individual into the Strand Theatre and, failing in that, went on to Sussex Hall and wound up a debate on Rifle Corps by a savage attack on Bolton and someone who backed him up." The meek and highly-gifted individual obtained slightly better results than Clarke, who had, however, nothing to complain of, and set himself to joining Greek and Latin classes in the summer.

In the meantime the busy young man not yet out of his 'teens added a new activity to his already crowded existence. Crosby Hall decided to start a magazine, to be known as *The Journal of Evening Classes* and to be published monthly. Of this magazine Clarke was appointed editor. His writings heretofore had been mainly confined to examination answers

and to letters. His epistolary style shows traces of that verbal pomposity which generally distinguishes the writing of the intelligent young. Thus in August of 1858 he writes to Fanny: "My dear sister, as we have not heard from dear Mamma this morning I suppose we may presume that you are progressing favourably. I trust such may be the case and that you will soon be able to leave your room, when I feel sure that the united influence of the sea air and dear Mamma's kind nursing will rapidly restore you to health." His letters also show, however, a neat turn of phrase, as when he concludes a letter, "Love loses nothing by subtraction, so after you have given mine to all the rest you will still have abundance for yourself." In another letter he declares that he is "very well and as lively as an emancipated black."

The young editor started his task with enthusiasm and a joint editor. Of these two the former proved the more enduring asset, as his co-editor confined his labours in the twelve months of the journal's existence to adding his signature to the manifesto which Clarke had drafted for the opening number. The aim of the paper was to give half of its space to contributions from young men attending evening classes, and to publish things of primary interest to that particular public. Edward Clarke showed that he had grasped at any rate one of the most important principles of journalism. "We are fully alive to the danger which chiefly besets the editors of magazines like that for which we are now writing. Like the respectable old gentleman in the tale they try to please everybody and too often they find, as he did, that they have satisfied none. It is essentially necessary for a journal of this kind to become successful that it must have a certain body of readers to whom it is principally addressed, and by whose support it is chiefly maintained." The journal, though based on these admirable principles, shared the fate of so many of its sort. The enthusiasm with which it was started suffered a rapid declension on the part of all save its editor. Edward Clarke soon found himself writing half the paper. Thus he wrote on the Brontës and Edmund Burke under the

initials E.G.C. and on Tennyson and other poets under the pseudonym Tom Brown. Thinking that descriptive articles should perhaps bear a different imprimatur he included these under the authorship of George Guy, but these, too, were written by himself. There was no particular originality or distinction about any of these contributions, but they are soundly written in respectable prose, and considering that they were the work of a boy of nineteen in full-time employment elsewhere they are extremely creditable. He could say with justice, as he did in his final editorial in December, 1859: "Our belief in the value of such a periodical remains unshaken . . . had the members of our Institution known their true interests they would have prevented the failure which we now acknowledge and regret."

Though the collapse of the journal was naturally a great disappointment to Edward Clarke, it was very far from leaving him without interests outside his work at the India Office. It was at about this time that he began to give lectures himself on historical subjects. One of these subjects was "THE LAST OF THE BARONS" and another "JOAN OF ARC." On May 12th, 1860, we find him writing to Fanny from the India Office: "All last week the warrant business at the Office was very heavy and what with the two young ladies who have been making demands on my time—Joan of Arc and Helen Wood—I have had but little time to spare. They are both very well. Helen is looking quite jolly and has been enjoying herself in London. As for the other, I am now in the compressing stage of my lecture and have gathered so many facts as to make it tolerably sure that I shall not break down for want of something to say." The following week he writes: "The lecture has gone off very well at both places in spite of wet weather, which seems determined to reduce my audiences. On Tuesday my audience was small and so impassive that for half an hour all my efforts could not elicit a sign of their presence. However, when I got fairly into my subject they woke up and my peroration made them almost enthusiastic. In fact, the reports that were

spread afterwards were flattering enough to destroy whatever little modesty I might still possess. On Thursday I should have had a splendid audience but for the weather, and as it was upwards of 150 were there. The success was decided. . . ."

It seems strange that in the midst of so much activity he found time for social indulgence. But he managed to enjoy his leisure very pleasantly. A letter to Fanny describes his social activity when at home: "I had a treat on Tuesday last. Mr. Deffell gave tickets for the Italian Opera to Wilkes and myself and we heard Mario and Ronconi and I saw some beautiful dancing. On Wednesday I went with Helen to The Princess and saw 'Othello' admirably played. Last night Helen and Fanny Scott came to tea—I had been to the Royal Academy in the morning with Wilkes and Helen went to the debate at Sussex Hall. I made a speech and then went to a ball at the Whittington Club, where were Tom and Annie. I had half a dozen dances with her and got home after two, so have been gayer than usual this week."

His high spirits and vitality made him popular and offset the effect of the coltish conceit which youthful ambition and consciousness of superior powers often give. He himself has said that he was not popular with girls on account of his conceit; but it would at any rate appear from his letters that he did not want for their society. Be that as it may, the object of his serious attention was Annie, and to her he triumphantly succeeded in getting himself engaged in November of 1859. The news had a very different reception at home from that which he had cheerfully anticipated. Instead of congratulation, he was met with opposition and ridicule. As he was not quite nineteen, the attitude of his parents was comprehensible. But he had won for himself a safe job in open competition and was for that reason alone entitled to a more respectful consideration. In any case their expression of their views was unwise and was more likely to lead to an estrangement from them than from the object of his devotion. A certain bitterness was the natural result, but a compromise was

reached by which Annie was to be received by the Clarke family in the following February, three months later. With this he had perforce to be content and wrote to Fanny : " I have not the shadow of a doubt as to dear Annie's love and truthfulness and I can hardly tell you what a relief it is to me after the last six months. All I wish for now is the time when she may be received at home ; but for that I suppose I must wait until February. I have told Father my exact position and he says he shall not continue an opposition which he sees must be fruitless, so Mother will now be the only difficulty."

Thus it was that Edward Clarke found himself young, active, ambitious, and in love, and yet anchored to the India Office. His writing and his speaking had reinforced the desire which had been born in him by the spectacle of Lord Lyndhurst's reception in the House of Lords, of going into public life by way of the Bar, because they had given him the belief that he had in his own talents the equipment for success. The ridicule which had greeted the announcement of his engagement had also fired him with the determination to show what he could do. On the other hand, from a practical point of view, the India Office provided him with an assured income, which was the source of his livelihood. The attractions of a secure income, always considerable, became much more so by the fact of his desire to marry. Common sense, indeed, dictated the folly of quitting his safe haven to embark on an uncharted sea, where many foundered who were so much better equipped by training and circumstances for the voyage than was he himself. But youthful ambition does not ordinarily heed the voice of prudence and common sense. Clarke trusted rather to the inner instinct which spelt for him success in the new venture. At this stage he was helped by circumstances at the India Office.

At that time the Department was about to move its premises from India House to the new buildings at Whitehall, and concurrently some of the staff were to go. These, of course, were not to be the new batch of clerks who had just won their places in open competition. They were to

be older and less competent men. But these naturally were not anxious to leave, whereas Edward Clarke desired nothing better, provided that he could leave with the compensation which departure in such circumstances would carry with it. He saw a chance of making an accommodation, and of leaving the India Office with sufficient capital to enable him to study the Law. Naturally, his scheme met with vigorous opposition from his family and friends. His mother, who had wished for him something better than the shop, was content that he should continue in the clerical respectability of the India Office. Annie's grandmother, who saw that her granddaughter's heart was set on the young man, naturally opposed a project which seemed visionary in the extreme and was calculated to relegate the date of their marriage into an unascertainable future. Nevertheless, he remained true to his purpose and wrote to Fanny: "I have been talking to Mother about myself and she says she would be content for me to remain at the India House. I thought it would come to this. So if I give up the situation it must be in the face of home opposition. But I still hope that the changes now going on may give me a chance of leaving with a compensation, and, should such an opportunity offer, my decision is already made."

The arrangements were made, and in October of 1860 he left the India Office with his grant of £253 compensation. He had decided on the gamble, and there was no one who could play the hand except himself.

CHAPTER III

“VERY POOR, VERY AMBITIOUS, AND VERY MUCH IN LOVE”

EDWARD CLARKE'S first action prior to deciding on his course of conduct was to take a holiday. He went off first to the seaside to spend a short holiday with his family, and then went down to Petersfield to stay with friends of Annie's. She, he reports to Fanny, “was the same as ever, only gayer and more girlish than before. You would have been amused to see us both armed with crooks and canvas bags pressing through the thick copse on Friday to gather nuts. I do not know when I have enjoyed a day so much. On Thursday we went to Portsmouth and went over the dockyard and the *Duke of Wellington*. There again I was very much pleased with Annie. She showed an interest and intelligence in examining the machinery and questioning the workmen for which I had not given her credit. She was most anxious to see and still more to understand every operation, and showed great quickness of apprehension.” Here perhaps Edward Clarke, for all his cleverness, was perhaps a little ingenuous, as Annie's unfeminine interest in the machinery was perhaps prompted by a more feminine interest in himself.

With this side of his affairs running smoothly, and Annie being kindly received by his parents in February, Edward Clarke could devote himself to a consideration of the best means of reaching his goal. He had his £253 from the India Office and £180 which he had managed to save. These two sums together constituted his capital. He would have liked to have gone up to Oxford, with which he had been so impressed when he went there to become an Associate of Arts. But it was a step which his resources did not justify, nor was it compatible with the time at his disposal. He wrote to Fanny: “I went to see Ingram Bywater last night and had a long chat with him about

Oxford. I find that to go to the University would necessarily prolong the time before I could practise at the Bar to six or seven years, a term which is obviously longer than my purse or my inclination. If I stay in London my present capital may be made to defray my expenses while any studentship I might obtain would of course help materially. So it is almost certain that I shall remain at King's this winter, working hard and keeping my eyes open for any prizes which may be obtainable.”

There was in fact a scholarship which could help him materially. This was the Tancred Studentship, which secured to its fortunate holder a grant of £95 a year for six years on condition that he joined Lincoln's Inn and practised at the Common Law Bar. Once again Edward Clarke was blessed with good luck, for it so happened that all four Tancred Studentships were due to fall vacant at Whitsun of 1861. It seemed to Edward Clarke that here was the very thing for his purpose, and he promptly made enquiries concerning it. It was necessary to take papers in Latin and also Roman Law; and consequently he realised that he would have to endeavour to remedy his deficiency in Latin by strenuous concentration on it at King's College. He wrote to Fanny: “I went to see Sewell and after some conversation he gave me his decided advice not to go to College for the reasons of my deficiency in classics and my rather scanty means. To-day I have seen Dr. Cartmel and he concurs in that advice recommending me to study hard at Latin in London. The King's College classes begin on Monday and I think I shall take private lessons in Latin as well. So I shall stay in London this winter working steadily and in the spring I must use every exertion to try and get the Tancred Studentship. • Dr. Cartmel told me again to-day that they were generally given to distinguished University men, but however small may be my chance it will be worth an effort.”

So he set himself in the winter of 1860 and the spring of 1861 to prepare himself at his classes and with his Latin tutor for the Tancred in May. He turned aside to take the Inglis Examination at King's College, in which again

he did very well. He was working at this time very intensively, and shortly before the Tancred he began to suffer from strain and overwork. Just before going to Cambridge to sit for it he told Fanny that he proposed to stay there for some time to recuperate, as he was quite done up. "I keep it as much as possible from them at home, but I am so wearied I can hardly read a page without headache and dizziness. This is *entre nous* ; I am doing necessary work and, although I am sure to be beaten in the examination, I hope influence may help me." This was in fact the case, for when he went up to Cambridge to take the examination he found that nobody there thought it of any consequence what place a person took, so long as he did not utterly fail. Subject to that, the awards were made mainly by interest, and preference was given to those who were actually in need of them. Influence was in fact exerted on his behalf, notably by the Society of Arts, and this turned the scales in his favour. On June 4th, 1861, he was elected to a Tancred Studentship and on the same day entered as a student at Lincoln's Inn.

Edward Clarke's first activity on joining Lincoln's Inn was, as shown by his diary for that year, to dine in Hall five nights in succession. That course of conduct was not prescribed solely by considerations of suitable celebration. In those days there were no examinations necessary to qualify a man for membership of the Bar. All that he required was sufficient gastronomic endurance to enable him to eat dinners regularly each Term for three years. At the end of the three years he was entitled to be called to the Bar. It was customary, however, for these legal neophytes to read in Chambers as a daytime accompaniment to the serious business of eating dinners in the evenings. Such reading in Chambers might be energetic or desultory according to the inclination or intention of the person concerned. In Edward Clarke's case he had, of course, not risked so much to get to the Bar in order to waste his time, and he was desirous as quickly as possible of finding the royal road to success. The question of a suitable pupillage occupied his thoughts that summer but it was not until nearly the

end of July that he was accommodated in the Chambers of Vernon Lushington through the good offices of a mutual friend, Furnival. Vernon Lushington was a promising young barrister, son of one of the Admiralty Judges, and pupilage with him, which involved helping him with his papers and Reports and having the run of his Chambers, had the additional advantage, not inconsiderable in Clarke's case, that there was no payment to be made.

Clarke first went to Lushington's Chambers on Saturday, July 20th, and thereafter went daily. In less than a week Thomas Randall Bennett offered to take him into his Chambers. Bennett had lectured on Constitutional Law at the Working Men's College at Great Ormond Street, where Clarke had attended. The two had become friends before Clarke became a Law student, and Bennett was of much assistance to him in these early years. Bennett did not himself appear in Court, as he was handicapped by a curvature of the spine, but he had a very good Chambers practice in the drafting of pleadings, giving of opinions and so on. Here Clarke settled down to a daily attendance, which went on unbroken through August until he went on holiday in September.

He was back again in the Temple at the beginning of October, although the Courts in those days did not resume until the beginning of November. On the 15th he wrote to Fanny: "The Temple is looking less deserted every day and I have resumed regular attendance at Chambers. I think I told you I expect to be a Law reporter at two of the Equity Courts for *The Morning Herald*. This will occupy my days during term time and so I am making the most of my opportunities for Law reading before November 2nd. The reporters get £2 2s. a week each and I have become awfully covetous of late." He was in fact appointed a Law reporter by *The Morning Herald* a fortnight later, just before the beginning of the new term. *The Morning Herald* was in those days a leading Conservative daily, and Clarke had done well to get himself the position so soon after his entry to the Temple. He was assisted in doing so by his knowledge of shorthand and by the experience in writing

which he had already had. He worked hard at his reporting; though he did not always find the technicalities of the Chancery Courts in which he worked very much to his taste. Thus he writes to Fanny on December 4th from Vice-Chancellor Wood's Court. In apologising for not having written sooner he says: "I have been rather pressed with work lately, and you see I am obliged now to take advantage of a rather uninteresting case and write this in Court while a few feet in front of me an old Q.C. is pounding away at next-of-kin administrators, equitable interests, etc., etc." It is clear that the reporter's lot was not always a happy one.

Nevertheless, it was very useful, and Bennett got into the way of asking Clarke to revise and polish some of his own articles. He was able to do more for him than this. What Clarke really needed was an occupation which would bring him in some extra money and could be done in his spare time in the evenings and during the vacation. The obvious thing was literary journalism. He had had, as we have seen, considerable practice in an amateur way, but lacked contacts with the professional Press. Bennett was a friend of James Johnstone, who at that time owned *The Morning Herald*, for which Clarke was already doing Law reporting, and sent him a specimen leading article written by Clarke on some contemporary question of public interest. Mr. Johnstone was favourably impressed, and the result was an interview with Captain Hamber, who conferred with the literary editor as to the possibilities of his working for the paper. On August 27th the Editor wrote to Clarke to the effect that he would engage him at a weekly salary of £2 2s. to write book reviews to the amount of four columns a week. It was hard work, but it had the inestimable advantage of bringing in a regular salary throughout the year, unlike the Law reporting which of course only operated when the Courts were sitting. Clarke's practice was during term time to confine his literary work to the evenings, and not to embark upon it until after seven o'clock. This often meant that he had to work on it until midnight, for in this as in all else he undertook he was conscientious and anxious to give full value for his small but important salary.

Like other reviewers he from time to time received instructions from his editor as to what he would be glad to see in the review. Thus in December of that year the editor wrote to him in relation to some book, the identity of which is lost: “I should like very much to have a nice tribute to the Prince Consort and the Queen in a review of the work I send herewith for Wednesday night, say eight o’clock. About two columns and a half or three columns with extracts.”

Another form of journalism which Clarke succeeded in opening up for himself contained more of interest than it did of profit. This was Parliamentary reporting. Clarke was never a whole-time reporter in the House of Commons, but he was able to persuade Henry Morley, editor of *The Examiner*, a weekly paper to which he had occasionally contributed, to get him a ticket for the reporters’ gallery in the House of Commons. It was in point of fact only if there was a debate of especial interest at the end of the week that *The Examiner* was likely to carry a report of it. Clarke, however, attended the House regularly on Thursday nights and sometimes on Fridays. There is no record of what he was paid for this reporting; but it cannot have been very much, and there is no doubt that he valued the connection more for the opportunity it gave him to view the scene on which he was anxious to figure at a future date.

The remuneration which he obtained from his various forms of journalism and reporting, coupled with his Tancred grant and his savings, removed from him, who had only his own efforts to rely upon, the fear that his finances would not be sufficient to enable him to pursue his chosen course to the end. His task was in fact made the easier because Bennett refused to take the pupil fee to which he would normally have been entitled. It may here be mentioned—although Sir Edward himself has put it on record—that he himself, in recognition of this assistance, refused to take a fee from a pupil of somewhat slender means on condition that, when his turn came, the pupil should do the same: there was thus started a chain of free pupilage in deserving cases.

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Having made himself reasonably secure, Clarke threw the bulk of his energies into his main business of preparing himself for success at the Bar. He was not content with merely assisting his master in the Law with the preparation of his work. He read assiduously in the Library, attended the various lectures that were given, and when he felt that he had earned recreation took it by watching the acknowledged masters of their profession at work in the Chancery Courts. He was himself destined for the Common Law, but in those days the Common Law Courts were situated at Westminster, and he was not anxious to go so far afield from the Temple. Occasionally he went down to the Old Bailey to hear how criminal cases were conducted, and was once rewarded by a display of judicial wit by Mr. Justice Maule.

Maule was trying a rather bad case of indecent assault. The prisoner had found the girl in his orchard, picking apples. He cross-examined her : " I caught you picking apples from my trees, didn't I ? "

" Yes, you did, Sir."

" That was not the first time I caught you picking my apples, was it ? "

" No, Sir."

" When I caught you there before, I told you what I would do to you if I caught you again, didn't I ? "

" Yes, you did, Sir."

" And that was what I did to you wasn't it ? "

" Yes, it was, Sir."

Here Maule stopped the case. He told the jury it was quite clear that the girl went there knowing what would happen and so of course she was a consenting party.

But he spoke seriously to the prisoner before he ordered his discharge.

" Now, my man, I want to give you a serious caution. Don't you go on threatening girls you find in your orchard that you will do this sort of thing to them ; for if you do you will soon have no apples at all."

In addition to all these undertakings Clarke rather surprisingly found time for another branch of the art of

advocacy, for which few lawyers find the time or the inclination, namely that of rhetoric. This he did, not only by reading the speeches of the acknowledged masters of eloquence through the ages, but by practical application in his own person. In this connection it is interesting to note his ranking of British orators, which is contained in a letter to Fanny in November of 1861. The order he gave was Chatham, Pitt, Fox, Burke, Sheridan, Canning, Erskine and Brougham, adding that the subject is rather in his line. As it chanced, less than a year after writing this letter he met Brougham, the only member of the list then alive and at that time a man of eighty-four. The occasion was the launching of the Working Men's Club and Institute Union in June of 1862, of which Clarke became first secretary. Three years later he had the honour of speaking at a meeting at which Brougham presided, and the pleasure of hearing himself complimented by the veteran.

But the chief field for the exercise of his rhetorical talents before his call to the Bar was the Hardwicke Society, which in those days used to meet at a room in Dick's Coffee House in Fleet Street. The attendance was not large, but Clarke classified it as the best Debating Society which he had ever known: indeed at the time of his debating there as a young man, two future Lord Chancellors and a future Lord Chief Justice were forming their debating style in the Hardwicke. The Hardwicke no longer meets in Dick's Coffee House, but in the more sedate setting of the Middle Temple Common Room, where it has continued in a flourishing condition. It owes much to Clarke's enthusiasm, for on his call to the Bar he was Secretary of it for four years, and then its first President for a further term of three years. His interest in it did not end there, nor did the family connection with it lapse, for his eldest son, later Sir Percival Clarke, was Secretary in 1898 and President the following year.

It might be thought that this impressive accumulation of activities would have prevented Edward Clarke from having any social existence or outside interests. This was not so, nor did he at any time allow it to become so: even at the peak of his active success as barrister and politician

he never allowed himself to be confined too narrowly within the limits of his profession. Law reporting, attending lectures, journalism, attendance at the House of Commons, debating, and reading in Chambers—where as fellow pupil he had Montagu Corry, later Lord Rowton, and well known as Disraeli's secretary—filled most of his time. But he managed to lead a pleasant enough social existence in addition. That he was able to do this was due to his great vitality, which was reinforced by the fact that he was now doing work which interested and attracted him. He did not of course have much money, but he was careful to keep his daily accounts with much care. Thus we come across in his diary such items as

Boat	3d.
Lunch	1/2
Supper	1/6
Music	1/-

and on a Saturday when he goes out with Annie there is an item of 6d. for flowers and 1/7 for the omnibus. From time to time he bought books such as "Pendennis" for 5/10 or Campbell's "Rhetoric" for 2/6, and sometimes magazines such as *The Cornhill* or *The Examiner*. His visits to the theatre were fairly frequent, and especially to the little Strand Theatre, which was a great favourite of his. Sometimes, too, he would go to the Opera or the Academy, and on these occasions would generally escort one or another of his girl friends.

But he did not confine himself to indoor amusements. His holidays, generally taken in the early autumn, frequently took the form of walking tours, then a less fashionable amusement than it has since become. It was his normal custom to go on these unaccompanied, for he felt sure, as others sometimes do, that the best rest in a life which demanded constant contact with others, was a solitary holiday. He kept up a considerable correspondence, however, when away and most of his letters to his parents, with whom he was normally living under the same roof in

London, are descriptions of his walks written from the country inns at which he stayed in the evenings. In London he played cricket in the summer at Blackheath and other places, and was also a keen boating man, a taste which endured into later life when he had a house at Staines. In the early part of 1861 he took some twenty riding lessons, and confided in Fanny that he had fallen off twice. But he did not in after years persevere with riding, presumably not so much on that account as for reasons of time and expense.

But much of his thought and a proportion of his time was bestowed upon Annie Mitchell. But the course of true love did not run altogether smooth.

We have seen that he had become engaged to Annie at the end of 1859 in the teeth of certain opposition from his family. In February of 1860 his parents received Annie, and he had supposed that all was well. Unfortunately, this was not the case, for his mother, from a mixture of maternal jealousy and real concern as to its suitability, continued to try and obstruct the project. At the suggestion of his friend Fanny Scott, Edward Clarke talked to his father about it in the hope of overcoming opposition in that way. His easy-going father was not the man, however, to stand up to his wife on any matter in regard to which she had formed strong views. This annoyed Edward Clarke very much, for he had regarded the matter as settled. He wrote an angry letter to Fanny, in which he put his point of view with great frankness: “I, of course, have told Mrs. Platt (Annie’s grandmother with whom she lived) and Annie herself that the engagement will be acknowledged in February, and the agreement that was come to gave me a perfect right to say so. Should this be falsified through an objection which according to father’s own statement was founded solely on my age and mother’s jealousy and now is to be maintained when the first objection has disappeared simply for the sake of consistency, my position would hardly be pleasant. For several months my only aim has been to make sure of Annie’s affections and I believe I have completely succeeded. I believe that nothing now

connected with home could break the tie. That being the case the only question is as to the home results of the decision. Of course, I shall leave home. I was treated unkindly last year ; if I should find I have this year been deceived as well, I shall from my next birthday cease to be one of the family. Mother will then have the satisfaction of knowing that to gratify an unreasoning whim she has broken all the links of sonship or brotherhood which now bind me."

Fortunately, it did not come to this. Edward had inherited his mother's strength of will, and his determination carried the day at home. He did not leave home, and continued to perform his legal studies and his journalistic work from there. But another and more serious blow fell upon his relations with Annie, this time struck by Annie herself. Whether it was doubt and impatience of the new career which he had set himself to attain, or whether it was on account of the recollection of a former friend who had previously held her affection, is not quite certain ; but whatever the reason she suddenly broke off the engagement early in 1863. This sudden and unexpected catastrophe, coming at a time when it had seemed that all was going well, depressed Clarke considerably. As is not uncommon on such occasions, one serious reverse darkened the whole horizon of his activities, where all before had seemed bright. He suffered a degree of depression during that summer, which is illustrated in a letter he wrote to Fanny on July 17th :—

" 38, Moorgate St.,
E.C.

Dear Fanny,

You have certainly good reason to complain of my neglect since you have been at Rochester. I can only plead in excuse that it has been and is painful to write at all, especially when I must speak of what has so recently passed. As to my work that needs few words. I have done little in Literature, hardly anything in Law ; I have somehow got rid of my time, principally in discursive reading, and that is all. I am rather careless as to the future, and have

nothing to tell you of hopes or fears. *The Morning Herald* people are very kind, but they have only had about one column worth anything for the past three months. I have not bought the papers with my articles in lately.

What has passed with regard to Peckham I can only tell you in outline. By a singular accident we met at Mrs. Bryant's. Annie was looking ill, and was much upset. I went again the next day. She consented to see me, and all was made up. On the Sunday (three days after) we parted again for the same reason, and in nearly the same manner as before. There is much more I ought to say to you, but will not put on paper.

I suppose I shall go somewhere for a holiday this autumn, but have not made up my mind whether, when or where to go. This is not the sort of letter I ought to write to you, but let it pass. However else I may change I am still

Your affectionate brother,

EDWARD G. CLARKE.”

This mood of despondency was not natural to his character, and his vitality and confidence soon reasserted themselves. He did not see Annie, but the varied aspects of his work fully occupied his time. Chance and transitory contacts at the houses of friends were of course inevitable. Thus we find him writing very cheerfully to Fanny on March 1st, 1864, just before dressing for a Ball: “I may say that about a fortnight ago I met Annie at Mrs. Bryant's, by pure accident on both sides, and that we spent a pleasant and friendly evening. Anything more sincere than friendship need be feared no longer. I have been very gay this season (about a dozen Balls and parties) but I am now working harder than for the last two years. I am writing for the papers, which are getting on splendidly. I have given about half a dozen lectures since Christmas, all successful. . . . I shall be in steady work at Law until July, perhaps until November.”

This was much more characteristic of the high-spirited and ambitious young man, who had embarked confidently on a great gamble. As a prophet, however, he was not very

inspired when he said that anything more sincere than friendship with Annie need be feared no longer. He continued loyal to her memory and she on her side did not listen to the protestations of any rival. At the period of his call to the Bar, the estrangement still continued. But a few months later in April of 1865, two years after their parting, emboldened by an early success, to which reference will be made in the next chapter, he went to see her again. A reconciliation followed, which restored them to their old position of affection. Marriage was still not possible, however, for financial reasons, and it was rather over eighteen months later that a more assured position at the Bar, coupled with the death of Mrs. Platt and the inheritance by Annie of a legacy of £200, enabled them to take the step. At this first possible moment they were married in December of 1866 at St. Giles's, Camberwell, and thereafter Edward Clarke pursued his chosen career in the circumstances and surroundings for which he had hoped and waited so long.

CHAPTER IV

THE LEGAL FLEDGELING

EDWARD CLARKE'S call to the Bar in November, 1864, brought to a triumphant conclusion the first stage in the struggle. To young men circumstanced more favourably financially, the call to the Bar would mark the beginning rather than the end of the period of anxiety. This was especially true in those days when the absence of any examinations to qualify for the profession meant that anybody could become a barrister by the mere expenditure of time and money. In Clarke's case, however, the money had to be earned, and it was not unnatural that he should view the passage to the Bar as the difficult part of his undertaking. He does not appear seriously to have doubted the certainty of his obtaining a measure of success when once he was called. But in point of fact he, too, was faced with the same problems as any other legal fledgeling, though he had the advantage of the greater resolution which circumstances had demanded of him, and the readier confidence, which he had acquired in meeting them. His success in fact illustrated the truth of Lord Darling's dictum that in Law as in Life one is the more likely to succeed if one does not know any reason why one should not.

Perhaps the most interesting thing about the life of a great advocate is: how did he start? It is readily comprehensible that a barrister when once he has figured in some cases and acquired some clients, may be able to expand the number of his clients and with it the number of his cases. The process once started is cumulative like the growth of a snowball. But no snowball will grow from nothing, and it is that small, original, indispensable nucleus, which is of particular interest.

The necessary elements in securing a start at the Bar have been analysed in the "Life of Lord Darling."* The

* "The Life of Lord Darling," by Derek Walker-Smith.

three *desiderata* indicated there were, in brief : connections ; good Chambers ; assiduous cultivation of a portion of a provincial Circuit. It does not follow that the possession of all these three requirements will infallibly make a man a success in the legal profession. If he has no ability at all, he will fail as certainly as if he had not got them, though no doubt less quickly. But without at any rate one of these indispensable adjuncts to success, he is unlikely to be able to make a start at all. The bulk of cases at the Bar are done by people of no more than ordinary ability, which has been reinforced by one or another of these aids. It is not, in fact, when once the start has been made, a matter of great difficulty for anybody of ordinary intelligence to make a livelihood at the Bar. Most cases are won or lost on the facts belonging to them, and their result is substantially unaffected by the quality of the advocacy adduced. These cases are the staple product of the legal profession ; but they do not, of course, constitute the real drama of the Law Courts. This is to be found in those occasional cases in which there is room for an advocacy which can substantially influence the result. It is in these cases that the great advocate comes into his own, and of such great advocates Edward Clarke was to be a supreme example. But though no extrinsic advantages can make a man a great advocate, who has not the inherent qualities, the lack of them may prevent his developing into one. There is a long catalogue of illustrious men of the Bar, afterwards to become great advocates or Judges, who were saved by some lucky chance from abandoning in despair or disgust the profession to which they were later to add distinction. There is not, however, and in the nature of things there cannot be, any record of those with the inherent qualities of advocacy within them, whom the lack of extrinsic advantages at the start compelled to abandon their profession before they had a chance to adorn it. It is for this reason that even in the case of a great advocate the beginnings are all-important.

In the 'sixties the three qualifications for initial success at the Bar were similar, subject to the fact that the Chambers

system was then considerably less organised than it is to-day. Barristers sometimes shared a clerk, but the system of carefully graduated seniority with the theory of work passing down from hand to hand had scarcely been evolved. In those days many more barristers lived in the Temple, and had meals there and carried on their social activities in their Chambers in the evenings. The first Chambers which Clarke went to as a young barrister were in Pump Court, and were tenanted by a genial Irishman of sociable habits. He soon saw, however, that this was not the quality of Chambers for which, as an ambitious young man with his way to make, he was looking, and he transferred, with his boyhood friend Edward Pinches, to a ground floor set in 3, Garden Court, where he remained until with Pinches he moved to Essex Court. One reason why the Chambers system was less developed in those days was that eminent counsel were prepared to accept Briefs marked in very low figures. The consequence of this was that they might have many cases on the same day, and by endeavouring to attend to all, succeed in doing justice to none. There were times, however, when they discovered that it was a physical impossibility to do all the cases that they had accepted, and in those circumstances there was an opportunity for younger men to "devil" the cases. As the telephone did not then exist, such "devilling" was wont to fall to the man on the spot; and, as very frequently it was not until the great man was in Court that he decided which if any of his cases he was unable to attend to, it was more often than not the man in Court rather than the man in Chambers who collected the opportunity. It was for this reason that Clarke set himself from the first to attend very regularly in Court and take assiduous notes with the aid of his shorthand in the hope that it would be useful to somebody.

Clarke saw the advisability of cultivating some particular Courts in a circuit, and was minded to go the Western Circuit, as his family had come from Somerset. But the necessary expenditure without the guarantee of any immediate reward put this out of the question for a man in his

circumstances. It was necessary for him to find somewhere which he could operate from London, and so he chose the Surrey Sessions which sat at Newington. There was another very good reason for this, for he had connections there that were useful to him. He had not, of course, any relatives who were solicitors, but he had one contact which he had obtained in an unusual way. In the old days at the Crosby Hall Debating Society he had been the active leader of the Conservative side, while the no less active leader on the Liberal side was a young man called W. R. Stevens. Stevens was clerk in the firm of Freeland's, who were solicitors to the South Eastern Railway. Stevens, who admired the talents of his young Conservative friend, sent him a Brief, as soon as he was called, to conduct a small Prosecution on behalf of the railway company. Clarke was opposed by Samuel Lilley, the Leader of the Surrey Sessions Bar and a swashbuckling advocate of the old school, who defended. Clarke lost his case, which was stopped for want of evidence. But he had found a very good client, for Freeland's had a regular succession of small cases on behalf of the railway company, both Prosecutions, which were heard at the Surrey Sessions at Newington, and small Civil cases, which took Clarke to the County Court. He was not particularly successful, so far as results went, in the first few cases in which he appeared for Freeland's, and he must have had some spasms of youthful anxiety lest he should lose his first and best client. But they remained faithful to him and his fee book in those early days shows a large preponderance of work from them.

Another good client in those early days was obtained in a very similar way. Clarke went soon after his call to a meeting of a Debating Society known as the Socials, which met in the Rainbow Inn just outside the Temple in Fleet Street. Clarke was not a member but was taken as a guest to a debate on Parliamentary franchise which was to be opened by a young Irishman of considerable oratorical reputation. The Irishman was unable to turn up, and Clarke was asked to speak in his place. This he did in an impromptu speech, which much impressed all present. More

important, it impressed J. P. Murrough, a London solicitor in a very fair way of practice and formerly member of Parliament for Bridport. He was so pleased with the speech that he decided to send Clarke a Brief at once. This he did in the shape of a Prosecution at Surrey Sessions on March 23rd. There were two prisoners, one of whom was acquitted, but the other, who was defended by Lilley, was found guilty and sentenced to four months' imprisonment. For this Clarke was paid three guineas, but he obtained a richer reward in the shape of the next case, which Murrough sent him almost immediately.

This was the case of Charles Windsor, which attracted a certain amount of attention at that time, and developed, so far as Clarke was concerned, in a most remarkable way. Windsor was a fraudulent clerk in a New York Bank, from which he had stolen large sums of money, concealing his fraud by means of false entries in the books. The American authorities tried to get him extradited on the grounds of forgery ; and, if in fact he had committed forgery, they were entitled to extradition under the Treaty Law existing between the two countries. But the point arose : was the making of a false entry in a book equivalent to forgery ? Murrough was Windsor's solicitor and briefed Clarke to appear as Junior to McMahon, Q.C., with whom he was to make an application for Habeas Corpus to release Windsor on the ground that he had not committed the crime of forgery and was therefore not liable to extradition under the Treaty. The case was argued *in banco*, i.e., before three judges, in this case the Lord Chief Justice, Cockburn, Mr. Justice Blackburn, and Mr. Justice Shee. Clarke had not expected his to be a speaking part in the proceedings, and when McMahon had finished his speech for Windsor, Clarke told Hardinge Giffard—later to become a great friend of his, and as Lord Halsbury a famous Lord Chancellor—that he did not propose to add anything. Giffard, however, urged him not to lose this chance of addressing so important a Court, and so it was that he found himself addressing the Lord Chief Justice and two brother judges before he had been at the Bar six months. This was the case

referred to in the last chapter which induced him to go and see Annie again, and led to the reconciliation and marriage.

But the case itself had a sensational and unexpected sequel. Windsor had been released after the success of the Habeas Corpus application in April, but the Bank brought a Civil action against him for the return of the money. This case was heard by the Lord Chief Justice in July of 1865 at a time when the Circuits—in those days a greater magnet for leading counsel than they have since become—were just about to start. Added to this, the General Election campaign was just starting, which involved a large number of barristers. Clarke had the third brief for Windsor, which in the ordinary way, would be little more than a noting brief. Edward James, Q.C., was leading Counsel, but before the case came on the Election claimed him at Manchester, and Digby Seymour, Q.C., was given the brief. When he returned it a day or two later to participate in the electoral contest at Southampton, Murrough, anxious to secure a leader who was not likely to participate in the Election, gave the brief to Serjeant O'Malley. The day before the case was due to start, O'Malley had to go on Circuit, and returned the Windsor brief rather than prejudice his circuit work. Thus robbed in turn of three leading Counsel, the solicitors resolved to rely on McMahon. But here again they were unlucky, for he went to Ireland before the case came on to contest the Wexford constituency. So it was that Clarke found himself, as a young barrister of less than a year's standing, opposing three eminent Counsel for the Bank, headed by Sir John Karlake. Clarke made what was in the circumstances a judicious application for an adjournment. This, however, was refused, and he had to conduct the case in person and unaided against the the big battalions ranged in opposition. He did not succeed in winning the case, but made such a good impression both in his speech and in his cross-examination of the Bank's witnesses that he won the generous praise of Karlake and of the Lord Chief Justice. *The Times* reporter, Finlaison, saw to it that these comments received their due need of

publicity, and at that very early age Clarke found that he had had his first "advertising case."

It must not be supposed, however, that the bulk of Clarke's work at this early stage was of this lofty character. For the most part it was the knockabout work of the Sessions, the County Court, and the Police Court. For much of this he was indebted to Stevens, whose name continues for some years to be the most familiar in his fee book. Nearly forty years later Stevens wrote to him on the occasion of the dinner given by the Hardwicke Society to celebrate the fortieth anniversary of Sir Edward's call to the Bar :—

"It is a severe punishment to me to be disabled from coming to the Hardwicke dinner on Friday. I cannot tell you how gratefully I appreciate your thoughtful kindness in wishing me to be with you on this memorable anniversary, nor what delight I should have felt in adding my small voice to the acclamations that will greet you.

The summer of 1864 remains fresh and vivid in my memory, and in my leisurely old age, I often recall with pride my associations with you at the dawn of your great career. I have no doubt that even greater splendour and distinction are before you, but may I say, as a looker-on, that before all I hope you will be spared that you may continue to set an example of loftiness and independence of character in high place.

Forgive this prosing

from your earliest client,

W. R. STEVENS."

It is said that when Lord Sankey became Lord Chancellor it was discovered that every solicitor in Cardiff had given him his first brief at the Bar. It is pleasant to think not only that there was no doubt in the case of Sir Edward Clarke, but that pleasant relations continued until the end between him and his earliest client.

There was another gentleman who at an even later date recalled to Sir Edward the memory of these early days.

This was a Mr. Treggs, who emigrated to New Zealand, where he became editor of *The Press*. He wrote in 1915:—

“ May I be pardoned for mentioning the circumstances under which I first saw you ? It was at the Kingston Assizes when I was a lad of sixteen or seventeen learning to be a reporter. I am a little hazy as to the details of the case except that it concerned a venerable amateur astronomer named Carrington, his attractive young wife and a groom. One incident which I remember caused a sensation of surprise to run through the Court was when the wife, who appeared perfectly well-spoken in the witness-box, had to confess, when asked to sign her depositions, that she could not write. I also remember very distinctly that the occupants of the reporters’ box—no bad judges you will admit—were very much struck with the way in which you handled the case and were convinced that you would attain the highest distinctions at the Bar.”

Some of the cases which he had illustrate the difference between conditions then and to-day. For instance, on September 17th, 1866, he appeared at the Old Bailey before Mr. Justice Lush in the case of *Rex v. Alexander Gibson*. It was alleged that Gibson had been guilty of furious driving down the Waterloo Road at a speed of no less than twelve miles per hour. The jury rejected the suggestion that such speed was not compatible with sobriety, and Gibson was found “ not guilty.” Less fortunate was David Kennard, a boy of eighteen, whom Clarke prosecuted at the same Sessions. His crime was the theft of 5s. 6d. In spite of the plausible defence that he was in a public house at the time of the alleged occurrence, he was found “ guilty ” and sentenced to seven years’ penal servitude. The sentence appears to modern eyes, in spite of his two previous convictions, to be savage to a degree. To-day, such a boy, who had become the associate of bad characters, would be sent to Borstal in the hopes of ridding him of his evil associations and making him a good citizen. Whatever the deterrent merits of the old system—and even as deter-

rents such sentences do not appear to have been particularly effective—it was certainly not calculated to make good citizens of young criminals.

In the following year, he appeared at the Old Bailey in company with an array of the most distinguished counsel of the day, including the Attorney-General, Sir John Karslake, Brett, the Solicitor-General, Hardinge Giffard, and Harry Poland. The case was the prosecution of five men and one woman for the murder of Sarah Hodgkinson, who died as a result of an explosion near Clerkenwell Prison. The motive for the explosion was supposed to be an effort to free two Irishmen, Burke and Casey, who were in custody at Clerkenwell Prison on a charge of treason-felony. A barrel of gunpowder was undoubtedly placed beside the prison wall, and all the prisoners, except the woman, Ann Justice, whom Clarke defended, knew of it. She had been visiting Casey at the prison on the day of the explosion, and had been in conversation with Desmond, one of the accused Irishmen, just before the occurrence. It was not very difficult for Clarke to argue that it was very unlikely, if she had known of the plot, that she would have endangered her life by appearing on the scene in this rash way. Consequently he was able to secure a verdict of "not guilty" for her at the close of the case for the prosecution. The case against the rest of the prisoners went the whole distance, but the corroborative evidence was weak and only one was convicted.

In these early years he had two cases at the Surrey Sessions which had just that element of the unusual, which enables the man with the flair for advocacy to distinguish himself from his fellows. In one of these he was defending two people who were indicted under the name of Allbrook for keeping a disorderly house. They were described in the Calendar as "married," and were spoken of throughout the case as husband and wife. Now in those days, long before the Criminal Evidence Act of 1898—passed partly as a result of the long and persistent advocacy of Sir Edward Clarke—no prisoner could give evidence in his own defence, nor could his wife give evidence for him. In this case the

evidence usual in this type of case was given : police watching ; people seen to enter ; the man or woman letting them in ; money changing hands ; lights appearing in the upper windows ; couples leaving together. The case looked very black against the prisoners and so Clarke took a legal point. He submitted that a woman who was acting under the control of her husband could not be convicted of the offence which she had committed as a result of the coercion which the law presumed in such cases. This was the legal position and so remained until it was altered as the result of a famous case nearly sixty years later. Consequently, Sir William Hardman, who was at that time Chairman of the Surrey Sessions, agreed with Clarke and directed that a verdict of "not guilty" should be taken against the woman, who was duly discharged. Clarke saw her safely out of the dock, and then in the course of his address to the jury announced that he would call her as a witness on behalf of Allbrook. The Chairman pointed out that he could not do this, as a wife was not competent to give evidence on behalf of her husband. "I am going to prove that she is not his wife," was the unexpected reply. So the woman was called, and swore that she was not married to Allbrook, though she had lived with him for some years. He was an actor at the Lyceum Theatre, and was never home until after midnight. Consequently, he had no part in the offence of which she had just been acquitted, and which she admitted was hers and hers alone. The jury believed her evidence, and acquitted him also. The result was in the nature of a triumph for Clarke, but it was one for which Sir William Hardman never quite forgave him. In this one can feel a certain sympathy for Sir William because, however gratifying to Clarke, the result can hardly be said to have contributed to the ends of justice.

The other case, also at the Surrey Sessions, showed that no case is ever quite hopeless. Clarke was instructed to defend at the Surrey Sessions a prisoner who had been kept in custody on a charge of having indecently assaulted two young children during the afternoon performance of the pantomime at the Surrey Theatre. The solicitor instructing

Clarke told him that the client was a City merchant of standing and a Past Master of a City Company, which explained his refusal to give his name when arrested and his persistence in his refusal when he came before the Magistrate. The evidence was that he went into the pit of the theatre, which was not very full, and where many children were standing on the seats. A woman employed there in selling programmes observed his movements, and thought them suspicious. Eventually, she went to the attendants at the entrance and complained to them of his conduct. As she was speaking to them, the prisoner came hurriedly out, and disregarding an attendant who called to him, ran into the street and jumped into a passing hansom cab. The cab was stopped and he was arrested, still refusing to give his name and address.

The case looked desperate, for under the law as it then stood the prisoner could not of course give evidence to explain his conduct. In the absence of any such explanation, his behaviour, which so strongly suggested a consciousness of guilt, was strong in corroboration of the evidence of the programme-seller. Her evidence was indeed damning, but it had to be broken down if the prisoner was to have a chance of acquittal. In the course of her examination-in-chief she said, "I knew he was up to no good for I had seen him at it before." On hearing this Clarke decided on a desperate course. He decided to press her as to these previous occasions. So contrary was this to the usual custom of strenuously objecting to the record of a past offence, that Sir William Hardman, who tried the case, afterwards told him that he thought he had suddenly lost his senses. The cross-examination of the programme-seller proceeded :—

"What was it you saw before?"—"Exactly the same behaviour."

"Had you seen it only once before?"—"No, three or four times."

"Always just the same behaviour?"—"Yes."

"Always the same person?"—"Yes."

"Had you ever tried to stop him before?"—"No."

"Why not?"—"I went to speak to the women in charge of the children and before they told me what had taken place the man was gone."

"So I suppose you made up your mind that if he came again you would not let him escape?"—"Yes, that I did."

"Did you see this gentleman come into the theatre?"—"Yes."

"Did you make up your mind directly that he was the man you had seen before?"—"Oh, yes! I knew him well enough."

"Not very light in the theatre, was it?"—"No, not very light, but I knew him well enough."

"So the moment he came in, you made up your mind that he was going to do just what the man had done before and that you were going to catch him?"—"Yes, I was not going to miss him this time."

"And everything happened just as you had made up your mind it would?"—"Exactly."

By dint of these questions he had so turned the attack that the previous conduct alleged, so far from prejudicing the prisoner, was evidence that the programme-seller had already made up her mind before the occurrence of the incident on which the man was charged. A few more questions as to the details of dress and appearance of the man whom she had seen before were followed by a speech to the jury stressing the danger that any respectable man was in of being accused by such a woman in such circumstances. The result was an acquittal, which could hardly have been secured without the taking of that considerable risk in cross-examination.

Such cases as these constituted a leaven of unusual excitement in his work. For the most part his work at this period consisted of railway prosecutions for Freelands, who were solicitors to the Southern Railway, and of small civil actions. The County Court in which he appeared most frequently was at Southwark, but he went to many others as well. His first fee book was kept in his own hand and included not only the ordinary particulars of solicitors, nature of instructions, and amount of fee, but also a reference

to the subject-matter and the result. Thus April 19th, 1865, contains the following entry :—

“Waghorn (name of solicitor). *Ernleam v. Leach*. Defendant.

Mayor's Court (i.e., the Mayor's and City of London Court held at the Guildhall). Action by tailor for goods. Coat, £6/6/6; Trousers, £2/2/-. Defendant paid £4 into Court. Tried, April 21st. Wilson for Plaintiff. Amusing trial. Verdict for Defendants. . . £2 2. 0.”

Who Wilson was, and what proportion of the £4 was paid into Court in respect of the coat and what in respect of the trousers are things that we shall never know. Given these particulars, however, it is not difficult to guess wherein lay the humour of this amusing trial, and apart from that aspect of it Clarke was quite well paid in receiving two guineas for so small a claim.

Most of the fees are small, and it is very rare in the first few years to find any fee of double figures. Thus the brief in the Windsor case referred to was only marked “£6/6/-.” He appeared fairly frequently with Silks to lead him, but in those days Q.C.s went into Court for very small fees, and consequently Clarke's Junior proportion of these was also small. Thus on November 22nd, 1865, he was led by Poland at the Old Bailey but only received four guineas, and in the following February he was Junior to the great Serjeant Ballantine in a civil case for the same fee. As late as December, 1868, he held a five-guinea brief as Junior to Hardinge Giffard, Q.C., and an eight-guinea brief as Junior to Digby Seymour, Q.C. The character of his work was varied by occasional licensing briefs, which, as is the way with the generous-hearted Trade, were marked in rather higher figures. For his first twenty-guinea brief we have to go forward to the autumn of 1867, the fourth year of his call to the Bar. This was in an arbitration in which he was briefed by Freelands. Like the better paid work in so many spheres of legal practice, the case itself was technical and of interest only to the parties.

Nevertheless, the small fees mounted up, for there were many of them ; and in these early years, he was not only learning his profession and having the excitement of many contested cases, but was also making an income, which was more than nominal almost from the start. In 1865, his first full year at the Bar, he made £100 in fees. The following year, he more than doubled this total and earned £240. In 1867 and 1868, his earnings remained at £300. But in 1869 they went up to a figure of no less than £650. This was due in part to his first big brief. The story of how he obtained that belongs to a different context.

It may be of interest to compare his early earnings with those of other young men later to become famous in the Law. Hawkins made £80 in his first year, £160 in his second, and £320 in his third. Haldane, considerably later, made, on the other hand, £30 in his first, less in his second, and contemplated emigrating to Hong Kong. Charles Russell, later to be Clarke's opponent in many famous cases, had very little London work in his early days, and, would stay in his Chambers only a short time before adjourning to the Inns of Court Hotel to play *écarté*. From which it appears that, though a good start is not essential to ultimate success, Clarke was more speedily launched in his profession than many who were later to become very eminent.

CHAPTER V

THE FAMILY MAN VERSUS LAW AND POLITICS

IN later life, Sir Edward Clarke left this impression of himself at this time: "Sir Edward Clarke owed none of his success to any advantages of personal appearance. He was below the middle height, and of sturdy figure. His strong features gave the face a stern and almost harsh expression, and the brown eyes, which might have softened it, were half closed under heavy brows. In his youth and early manhood, he was not a favourite with men or with women; his painful earnestness gave him an unattractive severity of appearance and manner; but in later life prosperity mellowed him, and the saving grace of humour displayed itself in some of his later speeches."

Such was his description of himself in looking back from the vantage point of old age. It is true that he was always very much in earnest, and early youth finds it difficult to wear learning or ambition lightly. He always, however, had friends, and throughout a long, vigorous and somewhat uncompromising life, he made remarkably few enemies. If the self-portrait is a little harsh, it is accurate when it speaks of mellowing. It was not only prosperity, however, which mellowed him. He was mellowed by the marriage and family life which he had so much wanted. It would have been surprising if a young man, dreaming of the triumphs of law and politics and seemingly deprived of them by lack of means, ardently wishing for marriage and resolutely opposed in his desire by his parents, had been otherwise than a thorny subject. Rather is it surprising that he mellowed so rapidly. He did not require prosperity, as he suggests. The reasonable contemplation of it, coupled with his happy domestic life on which he entered in the late sixties, was enough to make him a

cheerful and contented man, always anxious to do what lay in his power to make others the same.

On the return from his honeymoon early in 1867, Edward Clarke took his wife to their new home at 12, Gloucester Cottages, in the Peckham Park Road, then considerably more rural than Time and the hand of man has since allowed it to remain. The house contained seven rooms, for which he had only to pay the almost inconceivably modest rent of £33 per year. From their headquarters there, they indulged in such simple pleasures as trips into the country at the week-ends, the weekly meeting of the Choral Society, and an occasional evening of whist. In the beginning, there was need for economy, but this did not come difficult to either of them, and such economies as Edward Clarke's daily walk to the Temple and back were undertaken at least as much for pleasure as through necessity. Those early days were not without anxiety, the more especially as his wife soon showed signs of that delicate health which prevented her life from being a long one. He was in the first year of his marriage, the more alarmed on this account because he had been rejected by the medical officer of the Scottish Widows' Fund, with whom he had wished to insure his life for £1,000. This being so, in the event of his death, his wife would only have the £60 per year which she had inherited from her grandmother. Since Edward Clarke lived to be a nonagenarian, it need hardly be said that the medical officer was mistaken in rejecting him. In fact, although it was an added anxiety in those early days, the effect of the mistake was not prolonged, for early in 1868 he was able to insure himself with another insurance company for £1,000. This coincided with a rise in his earning capacity at the Bar, which gave promise of still better things to come. It is true to say, therefore, that whatever the sorrows and disappointments which life brought him, he was from the age of thirty till his death, thanks to his own great ability, free from financial worry.

Until 1872 he and Annie continued to live in Gloucester Cottages. By then they had a daughter Mabel and a baby son Percival, later to be famous as a criminal advocate



EDWARD CLARKE'S FATHER AND MOTHER



FANNY CLARKE



MRS. EDWARD CLARKE

and, as Sir Percival Clarke, Chairman of the London Sessions. This growing family necessitated a larger house, and they moved to Dagmar Villa, in Camberwell, where in 1875 their family was added to by the birth of another daughter, Ethel.

In 1872, he wrote to Fanny: "As to home I feel almost venerable when people ask after my children. They are both well, the boy is a bonny little fellow and Mabel has grown into a strong, sturdy child, very unlike the pale little thing of this time last year. Annie is very well; not always in good spirits and a little disposed to fret at my absence from home at meetings and dinners, etc., but in good health and getting thoroughly over her confinement. . . . You know we should be very glad to have you a little nearer and more get-at-able. I am sure you would like to drop in on us occasionally and see my severity with the rebellious girl and my tenderness with the ever-hungry boy, and generally the pleasing way in which I go through the paternal duties."

The background of home life was indeed pleasant; unfortunately, as is the case with many busy barrister politicians, it often had to remain a background. Clarke had by no means discontinued either his political or his lecturing activities on his call to the Bar. On the contrary his new status gave him a greater value in these other spheres. In 1870, during the Long Vacation, he went as far afield as York to give a lecture on "The Life and Character of the late Lord Derby," making it a condition of going that he should receive a good notice in the local Press. The following October, in writing to his brother, he says: "Last night I lectured on the House of Lords; to-day I have spoken at the laying of the foundation stone of some schools at Spitalfields; to-night I preside at a debate of the City of London College; and I have already seven lecture engagements for the winter." It can be seen, therefore, that what leisure he had from law was very actively engaged. But the sphere in which he most delighted to participate was his first love of politics.

In those days of restricted electorates and even more restricted political circles, it was not an easy thing for a

young and obscure barrister, with the backing neither of family connections nor of means, to play any prominent part. But Clarke was lucky in that the period of his youth coincided with the awakening of the Conservative Party to the necessity of cultivating and organising the support of Working Men's Associations. The prime movers in this venture were Gorst and Henry Cecil Raikes, both men destined to be associated with Clarke for many years, and both at that time young barristers as well as Conservative politicians. At their invitation Clarke attended both the first meeting of the Metropolitan Conservative Working Men's Association and a little later that of the National Union of Conservative Associations, which developed from it. The National Union started with a dinner presided over by Lord John Manners, who read a letter from Disraeli containing the striking passage: "None are so interested in maintaining the institutions of the country as the working classes. The rich and the powerful will not find much difficulty under any circumstances in maintaining their rights, but the privileges of the people can only be defended and secured by national institutions."

A body such as the National Union afforded Clarke his opportunity. The Reform Act of 1867, by widening the Franchise, had made it essential for a party aspiring to political power to make an effective appeal to the working classes. For making such an appeal Clarke was admirably equipped. He had a natural eloquence reinforced by wide reading, a keen mind sharpened by his daily contests in the Courts, and an industry and vigour which in the eyes of a working-class audience far more than compensated for the elegant appearance, the conventional upper-class up-bringing, the social connections and the background of broad acres, the lack of which would have handicapped him in less democratic times. So it was that at the very first meeting to which the Council of the National Union, of which he had been appointed a member, was asked to send a speaker, Clarke was the man to represent them. The occasion was of considerable importance, being the Quarterly Meeting of the York Conservative Association.

It was Clarke's first political speech on a public platform, and therefore at once a great chance and a considerable ordeal. The way in which he acquitted himself can be gathered from the fact that the National Union reprinted the text of his speech and issued it as a pamphlet. The speech has another interest in addition to that. It affords early evidence of that life-long admiration of Disraeli which was a strong and abiding element in Clarke's political development. "In 1846," he said, "the Conservative Party was divided, cast down, and dispirited. But during the last twenty years a wonderful change has been effected and chiefly by the consummate genius of the greatest of living politicians—Mr. Disraeli. The Party has been reorganised, and now by the power of its unity it holds a commanding position in the legislature, and it has a just confidence in the statesman who guided it so well."

This speech established Clarke's reputation as a speaker in the more active circles of the Conservative Party. The General Election of 1868 was drawing near and consequently his services were much in demand. The main question at the election of 1868 was that of the Irish Church, a subject which many Tories, not altogether incomprehensibly, found dull. For this reason, it was necessary not only to persuade the electorate to the Tory point of view, but also as a condition precedent to this, to arouse their interest in the subject. It was with a view to meeting this requirement that Clarke was commissioned to prepare and deliver a series of lectures in various parts of the country on this burning question. He went to Lewes, King's Lynn, to Dover and to Southampton, and finally to Cheltenham. At Cheltenham he made so great an impression that he was retained to speak there on behalf of Mr. Agg-Gardner, the youthful Conservative candidate.

The General Election at Cheltenham in 1868 was notable in many ways. In the first place it was the last election held under the old system of open voting. Under this system Nomination Day was by no means the formality that our more restrained procedure has subsequently made it. Both candidates arrived at the appointed place escorted

by bands and pugilists in order to impress the Returning Officer and the populace generally with their claims to the representation of the Division. The manner in which the candidates made their speeches to the accompaniment of the deafening noise of the opposition band and harried by missiles of all sorts, has been described with singularly little parody or exaggeration in the immortal pages that deal with the Eatanswill Election. The candidate who was defeated on the show of hands invariably demanded a poll, which was always granted; but this procedure tended to be almost as boisterous and scarcely more dignified than the other.

It was in an election conducted in this atmosphere that Clarke had to endeavour to persuade the electorate on the merits of the Irish Church dispute. Young as he was, he was about five years older than either candidate, each of whom was in fact an undergraduate at the time, Agg-Gardner at Oxford and his opponent at Cambridge. No doubt it was felt that this added an additional sporting element to the election and that the youthful vigour of the two candidates would best survive the ardours of such campaigning; as to their inexperience in rhetoric and lack of information, this was a less serious drawback as it was unlikely that much that they said would be heard. Agg-Gardner himself and his local supporters found the task of interesting the electorate in the Irish Church beyond their powers. A remarkable change came over the scene with the appearance of the young barrister from London. Hitherto the meetings had been apathetic and half-full; but after Clarke arrived, in the words of Agg-Gardner, "the fascination of his eloquence rapidly filled up the meetings." That these were no idle words is shown by the fact that his last meeting in the Town Hall was packed by the supporters of both parties, who at the conclusion of his speech passed a unanimous vote of thanks for his visit to Cheltenham and the brilliant rhetorical achievements which he had there performed. The circumstance must be unique in the annals of electioneering history, and would certainly be impossible in these days when

subjects closer than the Irish Church to the heart and the pocket of the English democracy divide the parties at election times.

From Cheltenham, Clarke went on to Cardiff, where his friend and not infrequent associate in professional work, Hardinge Giffard, was the Conservative candidate. From Cardiff it had been his intention to return to London, but his reputation had gone before him, and the Swansea Conservatives pressed him to pay them a visit. He agreed and went to Swansea, where he found arrangements had been made for a ticket meeting. He announced his intention of holding an open meeting, only to be told that no Conservative Meeting had ever been held with open doors in Swansea. Clarke replied that he would speak at an open meeting or not at all. Eventually the organisers gave way, not without lugubrious presentiments of what would happen. At first it looked as if their forebodings were justified. The chairman was not given a hearing at all, and for the first half an hour Clarke was inaudible in the face of pandemonium. Then he broke through and was able to command their attention and to finish his speech without major interruption and without being the target of the pieces of granite which were later found in the galleries. At this meeting he showed himself possessed of the three qualities indispensable for the business of democratic oratory to a hostile audience: courage, eloquence, and tact. Those three qualities, then as now, will secure an eventual hearing from any British audience.

The result of the Cheltenham election was a disappointment to the Conservatives in that Agg-Gardner was defeated by his youthful opponent by 188 votes. The defeat, however, was not without its compensations for Edward Clarke. In those days, when the small electorates placed a far greater value on the individual vote than it bears to-day, election petitions brought by the defeated candidate to unseat his victorious competitor on the grounds of bribery were by no means uncommon. Agg-Gardner resolved to bring such a petition in respect of this election. Huddleston, Q.C.—later as Baron Huddleston, the last of

the legal barons—was briefed as leader for Agg-Gardner. When it came to the question of junior counsel, Agg-Gardner and the Cheltenham Conservatives naturally remembered the claims of their young friend, who had won such golden opinions in Cheltenham. Consequently, he received a fifty-guinea brief to appear as junior to Huddleston in the trial of the petition. The petition was based chiefly on the activities of certain professional bruisers who were brought down from Birmingham by the Liberals, “to keep the peace.” It was alleged by the Conservatives that they took a very liberal view of these instructions, and were in fact engaged in intimidation. Though many of the activities of the bruisers did bear this interpretation, the petition broke down on the difficult question of agency, i.e., in proving that the Liberal candidate had in fact authorised them to adopt their unconstitutional methods. But although this case—the first of a long line of election petitions in which Clarke was engaged—was lost, it was profitable to him, for in all he made over £100 out of it. His political activities, therefore, had won him a prompt professional reward in the shape of this case, which was the most lucrative he had yet had and which was in large measure responsible for the rapid rise in his earnings.

For the next decade the law is the most important part of the life of Edward Clarke. The main feature of this decade is the steady advance in his profession. His domestic life had settled down to a pleasant background, and though he kept contact with politics, he kept them in reserve. That he intended to do this is shown by his reply to the invitation of the Hackney Conservative Association in 1868 asking him to be their candidate. In declining he said: “It is with great regret that I feel compelled to decline the invitation. I do so reluctantly but decidedly, for personal reasons involving my duties to others as well as to myself, which render me unwilling at present to enter the House of Commons.” The personal reasons were, of course, the necessity to build up his practice at the Bar so as to ensure the livelihood of his wife and family. He had to put politics, his ultimate objective, behind him for the time

being; and his active intervention was confined to 1873 and the General Election of 1874. For the rest he was engaged in discharging those duties referred to in his letter to the Hackney Conservative Association, by building up an impressive practice at the Bar.

The beginning of the 'seventies found him with his feet firmly planted on the path to legal success. It is true that the year 1870 saw a drop in his professional income from £650 to £530, but the former figure had been built up with the unexpected aid of the Cheltenham Election Petition. The setback, too, was only temporary, for in 1871 his earnings had grown to £840, while in the following year his earned income at the Bar reached for the first time four figures, never again to descend below that level. He was able to write to his brother Joseph from his Chambers at 2, Garden Court, on October 23rd, 1871: "As to money, do not trouble yourself at all. I should like to be allowed to help you when you want it and I do not like to have a sort of debtor and creditor account with a brother. My resources are not at present over-taxed. My professional work has been very brisk, and there is something over. So do not imagine that money questions, either past or future, trouble me at all. Sessions have been on, and I have been pretty busy since we came back to town."

Six months later he was writing to Fanny: "My own increasing work at the Courts, and increasing responsibilities at home, keep my time and thoughts pretty full. As to the former, you will be glad to hear my business has of late been wonderfully good both in amount and character. Since Christmas I have had quite as much as I can do, and have made more than twice as much money as in the corresponding time last year. I am glad to say I have just found a pupil, who will pay me fifty guineas for six months, and who as he himself will be called at Easter, will, I think, be worth as much again in the help he can give me in my work at Chambers."

His work was certainly increasing rapidly, and he was acquiring new clients as a result of the reputation that began to be his. In November of 1871 there appears in

his fee book the first entry for Messrs. Lewis and Lewis, the firm which the vigour and ability of Mr. George Lewis was at that time rapidly driving to the fore. There was certainly much of interest for a pupil to see, both in respect of Court work and of paper work and conferences in Chambers.

Few cases can have had a more piquant flavour than that of *Wallace v. Hampden* in which Clarke appeared in the summer of 1871. Hampden had wagered Wallace £500 that the world was flat and not round, while the intrepid Mr. Wallace staked his £500 on his suspicion that it was round. The referee appointed by them decided against the contention of Mr. Hampden, who thereupon abused Mr. Wallace as a liar and a swindler. Mr. Wallace brought an action for libel, and was successful in recovering £600 damages from Mr. Hampden, whose strange mixture of ignorance and obstinacy, therefore, proved very expensive to him.

Another case with a bizarre character, but much more serious, was the prosecution of John Rodway in March of 1872. One Saturday afternoon, after having been away from Chambers for a short time, Clarke came into Garden Court, and saw his clerk, Peacock, in negotiation with a solicitor. The solicitor, who was not entirely sober, was leaving papers and money on the clerk's table. The papers were a copy of the depositions in the case of Rodway, who was to be tried at Kingston on the following Monday for attempt to murder. The papers were marked with the modest fee of six guineas. Clarke took the papers home to read, and on the Sunday was visited by an old friend, who was much troubled because he had received a subpoena to attend as a witness at Rodway's trial. He did not know Rodway, but the married woman whom Rodway was charged with attempting to murder had formerly been Rodway's mistress, and while living with him had led a life of prostitution. Clarke's friend had from time to time visited her, and it was on this account that he had received a subpoena, of which Clarke advised him to take no notice. The next morning Clarke went down to Kingston for the

case, and there met his solicitor client, now quite sober, who put into his hands a dozen private cards, including that of his friend. So it was that Clarke had an additional and unusual personal interest in a case which was full of dramatic interest of its own.

Rodway, a tall, handsome, well-built man, had been a riding master in the Dragoon Guards. On leaving the Army, he travelled about the country as ring master in a well-known circus. While at Bristol he made the acquaintance of a girl of exceptional beauty whom he saw selling fruit in the street. He took her to live with him, and she accompanied him in his circus tours around the country. He then decided on a life of metropolitan ease, and established himself at Putney, where he lived in some affluence upon the girl's successful prostitution. One of her clients was a Mr. Carrington, a wealthy man of some eminence, being President of one of the principal Scientific Societies. He was unable to view this matter in proper scientific detachment, and became so infatuated with her that he begged her to marry him. At first, thinking of her association with Rodway, she refused; then, mindful of the advantages of the offer held out to her, she hesitated. Finally, in order to overcome her reluctance, Mr. Carrington brought her a will, which he had executed, in which he left her all his fortune. Unable to resist this nice attention, she capitulated and they were married in August of 1869.

Unfortunately, it would be untrue to say that they lived happily ever after. They might have done so, had not the lady been desirous of making the best, or the worst, of both worlds. She had no intention of breaking with Rodway altogether, and not only did she breakfast with Rodway on her wedding morning, but also went to stay with him for a few days on her return from her short honeymoon in Paris. Then for two years she lived happily enough with her husband at Haslemere, where the even tenor of her life was varied only by occasional but regular visits to London. There she would be met at Waterloo Station by Rodway, who would take her to a private hotel

in the Waterloo Road, from which a few hours later she would return to Haslemere. The one difficulty in this well-ordered routine was, of course, Rodway's persistent demand for money, which, in spite of the indulgence of Mr. Carrington, she could not altogether satisfy. Eventually he told her that he would go abroad and that she would see nothing more of him. In fact, he went down to Haslemere, after buying a long-bladed knife, and took up his quarters at an inn in the village, where he continued the heavy drinking which had lately been his chief occupation. One afternoon, after a morning's heavy drinking, he started off for the Carrington's house. She saw him lurching up the hill and ran down to the door so that no one else should see him. She would not let him into the house but stood talking with him just outside the half-open door. Her attitude displeased him, and he raised his knife and struck at her left breast. She warded off the blow with her arm, which took the wound that would otherwise have pierced her heart. Then he turned the knife against himself and struck feebly at his own chest, inflicting some light flesh wounds. She begged him to stop, and taking him by the hand went down the hill to the inn at which he was staying. They reached the door, but there she fell upon the threshold, and he staggered into the back room, where, still under the influence of drink, he began to write a letter addressed to a friend in London. She was carried back to the house, where she soon recovered, and he was arrested.

When the case came on before the Lord Chief Justice at Kingston, Clarke had only one possible line of defence: that the prisoner's intention had been to kill himself, and that it was in her attempt to prevent his carrying this intention into effect that she had been unintentionally wounded. As a foundation for this defence, it was necessary that he should bring out the story of their previous relations, and especially of the continuance of those relations after her marriage. From these arose the prisoner's threat to go abroad, which, Clarke argued, he changed into the intention that he would kill himself at her feet. The scene

in Court was intensely dramatic, as with question after question Counsel mercilessly tore aside the veil of respectability which she had cast over her life. The beautiful woman stood there answering quite simply and without faltering the questions that were put to her. In so doing she won over the sympathy of the spectators, and Serjeant Parry, who prosecuted, told Clarke afterwards that he thought it very cruel of him to drag her story out in that way. It was, however, clearly necessary if a motive was to be supplied for Rodway's intended suicide. As to the visiting-cards with which he had been supplied, including those of his friend, Clarke tore them up at the very beginning of the case.

His defence might have succeeded, but for the letter which was written in the back room of the inn. It had been handed to the police, and thereafter produced in evidence and given to the Judge; but it had not been read aloud, and Clarke had seen no copy of it. Consequently, he was pressing on the Jury in the middle of his speech the probability that Rodway had intended to kill himself and not the woman whom he had loved so long, without being aware of the contents of the letter. The Chief Justice interrupted him and said, "I think, Mr. Clarke, you had better look at this letter," adding, with kindly consideration, that it would be convenient to adjourn for a short time at that point.

Clarke read the letter, written as it was with a shaky hand on a rough sheet of paper and smeared with drops of blood from his blood-stained fingers. The last words written on it were, "I have stabbed the woman to the heart, I hope." It was not an easy letter to deal with, but Clarke argued to the Jury that there were no stops in the letter at all, and that it had clearly not been finished. If Rodway's failing strength had allowed him to complete what he had intended to write, it would have read, "I have stabbed the woman to the heart—I hope either for her recovery or my death." This explanation would have been in conformity with the theory which Clarke asked the Jury to accept. Despite the ingenuity of his argument, the Jury

did not accept it, and found Rodway guilty of attempted murder.

Even this was not quite the end for Rodway. It was alleged that he had been convicted at Bristol many years before of the manslaughter of a woman who lived with him at that time. The charge was, in fact, true, but Clarke cross-examined the police witness, who was called to identify Rodway, as to this. The witness became confused and uncertain, and the Jury thought the evidence unsatisfactory, with the result that they acquitted him on this charge. It was the only time in the whole of Clarke's experience in criminal practice that an acquittal was obtained on a charge of having been previously convicted.

If the previous conviction had been proved, Rodway would have been sentenced to penal servitude for life; as it was, he was sentenced to penal servitude for twenty years. In the result it made little difference to him, for a few years later he died in prison. Mrs. Carrington, who had maintained her composure in Court with the demeanour of a tragedy queen, gave way to a passion of tears when the case was over. On hearing of Rodway's death, whom she had undoubtedly loved very wholeheartedly, she pined away and within six months died in her husband's house. Mr. Carrington continued to live in the house at Haslemere, but after his wife's death became a recluse, and a little later was discovered dead in his house.

So ended the strange story of these three people's lives, which provided Edward Clarke with one of the most interesting of his early cases, the story of which remained in his memory for the rest of his life. The grimness of the case was somewhat relieved at the hearing by verses scribbled by Gathorne-Hardy, a barrister of the Circuit, who sat behind Clarke during the hearing, and passed up his verses to him. One of them dealt with the will with which Carrington had induced his wife to marry him :—

“ An ante-nuptial Will I thought was nothing but a joke.
A woman's will's the only one that marriage don't revoke.”

With regard to Clarke's main line of defence, Gathorne-Hardy wrote :—

“ So far as I gather the meaning of Clarke,
He seems to suggest it was done for a lark.
But as she was wounded and screaming with terror,
That line of defence is a ‘ clerical ’ error.”

Though politics were for the time being subsidiary to his practice at the Bar, they remained an important element of Clarke's life. He was Chairman of the Lambeth Conservative Association, and at the end of 1872 he added another political interest in London. Colonel Marcus Beresford, the Conservative M.P. for Southwark, a wealthy and popular local figure but a very poor speaker, wrote to him : “ It has occurred to me this morning that you might be disposed to assist me in various matters as they turn up, either in or out of the House of Commons, if you will not open your mouth too wide as regards fees. If you can afford the time to sketch out short speeches which I have neither the time to give nor the power to make, it would be a comfort to me to have you to fall back upon. At this moment, in the shape of evening meetings, I have (1) to be present at the Jubilee Dinner of Odd Fellows, Manchester, (2) to open the Bethlehem Chapel Bazaar, Lower Road, Deptford, on the 18th, (3) to move or second a Resolution at a meeting at the Guildhall, the Lord Mayor presiding, for the Final Repeal of Income Tax.” To all these varied and worthy objects, Clarke cheerfully bent his attention, and provided speeches thoroughly to the satisfaction of Colonel Beresford, although at any rate in the case of the Final Repeal of Income Tax, unhappily falling short of its desired objective. Clarke refused to accept any fees at all for this work, but received as a result of it something far more valuable. It was arranged between Colonel Beresford and himself that he should be considered as Beresford's prospective successor for the Conservative representation of the Borough of Southwark.

Before he had a chance of contesting an election himself,

Clarke had the unusual experience of fighting a By-Election by proxy at Dover. There had been a By-Election in 1871, at which Clarke had gone down at Gorst's request to make a speech at the introduction to the constituency of Mr. Barnett, the Conservative candidate. Mr. Barnett was defeated by Jessel, the Liberal Solicitor-General, but in 1873 Jessel's acceptance of the Office of Master of the Rolls caused another By-Election. Barnett had sailed for America, and consequently it was necessary to find a deputy to wage the campaign on his behalf. Clarke, whose rhetorical performances in Dover two years previously were well remembered, was asked to undertake the task, and gladly consented. So successful were his efforts that the seat was won for Barnett by 388 votes, the largest Conservative majority ever obtained in Dover up to that date.

A very short time later came the announcement of the General Election of 1874. There were signs that the long and almost uninterrupted period of Liberal Government was drawing to an end. There is little doubt that Clarke, now in the early thirties, and with several years of active politics behind him, could have contested a constituency if he had so desired ; and in that event, he would no doubt have entered the House of Commons at that time. Such, however, was not his desire, for he still felt that the time was not ripe for him to take this step. He would have been perfectly content to confine his activities to Lambeth, where he was Chairman. Unfortunately, however, he had a disagreement with Morgan-Howard, the Conservative candidate, over the administration of the fund, which Clarke had played the main part in amassing. This led to his departure from Lambeth on the pretext that he was needed elsewhere. The following week he received an invitation to go down and speak at Woodstock, where Lord Randolph Churchill was reluctantly contesting his first election at the behest of his father, the Duke of Marlborough. On his arrival at Woodstock, Clarke found that it had been decided to hold no public meetings owing to the youth and inexperience of the candidate. He protested that there was not

a constituency in England which could be won without the holding of a public meeting. In the end, they consented to hold a meeting if Clarke would himself come and address it, and this he promised to do on his return from the West of England, where he was also due to speak. He described Lord Randolph Churchill as being at that time "a nervous, rather awkward young man, who certainly seemed to have the most elementary ideas about current politics." There was certainly nothing in Lord Randolph's equipment at that date to suggest the powerful political gladiator which he was shortly to become. Clarke was able, however, to give him some useful hints, and to arrange for various friendly questions to be asked and suitably answered. This, coupled with a very effective speech on Clarke's own part, made the meeting a success, in spite of the fact that Lord Randolph tried somewhat obviously and wholly unsuccessfully to read his speech out of the notes which he had placed in the bottom of his hat.

The result of the Election was a decisive victory for Lord Randolph, who showed his gratitude by writing to Clarke from Paris, whither he had repaired immediately after the Election :—

" Dear Mr. Clarke,

Many thanks for your kind letter of congratulations on our Woodstock victory. I really am quite confident that many of the votes if not the majority may be attributed to your excellent speech. I was told afterwards that you had made a great hit in alluding to the probable disfranchisement of the Borough. With many thanks, for your assistance and your letter,

Believe me,

Very sincerely yours,

RANDOLPH S. CHURCHILL."

One of the results of his participation in the Woodstock Election was to commence a political and personal friendship between Edward Clarke and Randolph Churchill, which

lasted, in spite of political differences from time to time, until the date of Churchill's death. For the present, Lord Randolph was able to repair to the House of Commons and to start there the rapid process of changing himself from a nervous, awkward young man to a political leader of power and resource. Clarke, on the other hand, took himself back to the Temple, for he had to base his Parliamentary career not on hereditary influence but on the more solid and enduring fabric of success in his profession, carved out by his own hand.

It was to an established position in the Temple that Clarke returned after his political outing. In 1873 he received a note from Prentice, a well-known Q.C. of the day, telling him that he was sending him a red bag, which he hoped to see often filled with briefs. A red bag is the gift made by a silk to a junior, who has rendered him particularly valuable service in any case in which they have figured together. The possession of a red bag, while not conferring any official status, has the desirable effect of indicating that the junior counsel has won golden opinions on at any rate one occasion. Prentice's hope as to the briefs was abundantly realised. In 1874, the year of the General Election, Clarke's legal earnings rose from £1,102 to £1,566. In the following year they amounted to £2,225, with the result that in two years he had rather more than doubled his earnings at the Bar.

He was by this time doing a certain amount of work for the Treasury, and in 1876 his reputation as an expert on the Law of Extradition brought him an interesting Treasury brief. After the case of Windsor in 1865, Clarke had settled down in the Long Vacation to write a textbook on the Law of Extradition. This had been published by Messrs. Stevens and Haynes, who paid him the sum of £50 for the work. The book subsequently went into various further editions, and brought Clarke a much richer reward in the shape of the Cases and Opinions on matters affecting Extradition which came to him as the author of the book. In the De Tourville case the Treasury briefed him to prosecute because of his experience in these questions.

Henri Dieudonné Pierram De Tourville was an adventurer of French birth and British naturalisation. He was, somewhat unexpectedly, a barrister ; but he felt that he could more easily and comfortably provide for his extensive wants than by the gruelling work of the Bar. In November of 1875 he married a wealthy widow, whom he had known for only a few weeks and to whom he was the Count de Tourville. In the summer of the following year they set out on their travels and arrived in July in the Tyrol. There one evening De Tourville ordered a carriage in which he and his wife drove out to Franzenshöhe. There he dismissed the carriage which returned to the hotel, while De Tourville and his wife walked on alone. A shepherd saw them as they walked along the good road with the posts along its side guarding the steep declivity which ran down to the little River Klonnbach. Thereafter she was never seen again alive. They found her body, though, at the foot of the slope with her jewellery scattered about her.

De Tourville returned to the hotel in a state of the most enviable calm. He explained that his wife had had a slight fall and ordered four men to go and help her back. This matter seen to, he gave his attention to the more serious business of the arrangement of two dinner parties, at one of which the guests included the doctor who examined the body and the two sons of the District Judge. This hospitality showed prudence on the part of De Tourville because not everybody was inclined to take the same complacent view of the situation as he did himself. The manager of his hotel, the genial Herr Hoffer, had his share of the shrewdness of his calling, and he observed that the narrow path beaten in the grass where the body was found made it appear that the body had been dragged and had not rolled, even if it were possible for a body to have rolled so far. Further, the request for four men seemed excessive, if the lady was only slightly hurt, while further grounds for his suspicion were added by the indifference displayed by De Tourville on his return to the hotel. There was a hearing before the District Judge in Austria, but De Tourville's hospitality stood him in good stead, and things

went very smoothly for him. The Judge was inclined to put a most favourable interpretation on the evidence. Thus when Clapinson, the dead wife's lady's maid, said that she had seen no quarrel between husband and wife, the Judge's note read: "There was nothing to disturb their married life; on the contrary, they were very fond of each other." It was hardly surprising, therefore, that after hearing De Tourville's own statement, the Judge stopped the enquiry, saying that he had heard enough and was quite satisfied.

But if the Austrian Judge was satisfied, the higher authorities were not. They decided that De Tourville should not so easily be left in unchallenged possession of the £38,000 by which he had benefited under his wife's will. They decided, therefore, to apply for an Extradition Warrant to Mr. Vaughan, the Magistrate at Bow Street. Clarke was briefed to appear for the Treasury, while De Tourville was represented by notable counsel in the persons of Harry Poland and Montague Williams. The Court bore an unusual and picturesque appearance as the personalities of the little Austrian village came to give their evidence—the lady's maid, the gendarme who knew that the lady's maid was on bad terms with the prisoner, the hotel manager, and a merchant who had acted as interpreter at the Austrian enquiry. Poland strongly urged that it was improper that a British subject should thus be handed over, after the judicial authority of the district, where the accident had occurred, had investigated the matter and honourably acquitted him. The Magistrate agreed that the demand was most unusual, but Clarke based his case on the various circumstances which had now come to light, in connection with the position of the body and the impossibility that it could have rolled into that position, and the suspicious circumstances surrounding De Tourville's conduct. With this point of view, the Magistrate was prevailed upon to agree, and he committed the prisoner for trial in Austria. The result was a great shock to De Tourville, and we are told that, "The prisoner, who had exhibited a jaunty, flippant manner throughout, sometimes laughing outright

at the proceedings, was then removed from the dock in a very different mood, attempting to evade the gaze of the spectators as he passed to his cell."

It was at about this time that Clarke appeared for Bandmann, the actor and dramatic author, who was prosecuted for a common assault upon Mrs. Rousby, the actress. Mrs. Rousby had bought a play from Bandmann for £100, £50 to be paid on receipt of manuscript and £50 on the first night, which was to take place at the Queen's Theatre. During a rehearsal, it was alleged that Bandmann, who was apparently not free from the traditional touchiness of dramatic authors with regard to the rendering of their work, appeared on the stage and objected to a situation in the fifth act. Rudely remarking that he would be —— if he would see it done like that, he tried to take the manuscript away. Mrs. Rousby put out her arm to prevent him, and her arm got struck and bruised. "Mr. Bandmann," she said with hauteur, "this is not the first time you have struck a woman." To which grave accusation he replied by calling her "a —— liar." At least that is what Mrs. Rousby said occurred.

At the hearing before the Lord Chief Justice the prosecution called various witnesses to describe the assault. Their accounts differed slightly, some saying that Bandmann had got the manuscript and that Mrs. Rousby was trying to recover it, and others that the prompter had the manuscript and that Bandmann was trying to get it from him. All were agreed, however, that Bandmann must have struck her, as there was a cry of "Shame." Beyond this, no one appears to have done anything to interfere, except one man who called out virtuously, if slightly irrelevantly, after the retreating Bandmann: "Thank God I am not a wife-beater."

Serjeant Parry, who led Clarke for the defence, made it clear that the defence was that Bandmann had not struck Mrs. Rousby at all. On the contrary, the bruise was caused by a fall from her horse when playing Joan of Arc in the preceding month; that she was addicted to drink and that being in consequence in an unhealthy state, the bruises had

persisted, and she had decided to take advantage of that fact to lay the blame on Bandmann in revenge for his objecting to the way she was playing his drama. Witnesses were called to speak as to her fall from the horse, and these, in the unfortunate and temporary absence of both her counsel, she cross-examined indignantly in person. The Lord Chief Justice, however, who during the evidence for the prosecution had been inclined to favour the defence, clearly considered this a somewhat unfortunate if not discreditable line of defence. In summing up, he pointed out that Mrs. Rousby had really been put on her trial, as the charges against her of drunkenness and conspiring to fasten a false charge on Bandmann were more serious than the charge which he was trying. In a criminal prosecution, it is enough to show that even if the blow was struck by the defendant, it was delivered unintentionally. After an absence of nearly an hour, the jury acquitted Bandmann on the ground that the blow was struck unintentionally, a verdict which was greeted with applause in the crowded Court. With regard to the defence which Clarke and Parry put forward, it must be remembered that by instituting a criminal prosecution for assault instead of bringing a civil action for damages, Mrs. Rousby had deprived Bandmann of the opportunity of giving evidence on his own behalf. It was frequently necessary for the defence, in those days when a prisoner could not give evidence, to take the offensive, as being the only method open to them to contradict the case for the prosecution. So in this case, if Bandmann had been able to give on oath a simple and straightforward account of what happened in the theatre, the result would have been the same with less expenditure of time and less assailing of reputations.

In Bandmann's case Clarke had been opposed to Messrs. Lewis and Lewis, who were solicitors to Mrs. Rousby. He continued, however, to be one of their junior counsel, and had been concerned in some small cases for *Truth*, then under the vigorous direction of Mr. Labouchere. Shortly after the Bandmann case, Clarke came, through Messrs. Lewis and Lewis, for the first time into contact with Mr.

Labouchere himself, with whom he was to be concerned in a number of important cases over a long period. *Truth* published some paragraphs about Mr. Whybrow Robertson, Manager of the Aquarium Company, of which Mr. Labouchere was a Director. The gist of the libel contained in *Truth* was that the affairs of the Aquarium Company were under the control of Mr. Robertson as Manager, who had already been dismissed for dishonesty. After Robertson had issued his writ for libel more paragraphs appeared in *Truth* repeating the libel and giving details of the frauds, alleged to have been committed. Serjeant Ballantine, who was to appear as leading counsel for Robertson, hated Labouchere personally, and advised Robertson to take proceedings to get him committed for contempt of court. They duly moved for a rule to show cause why Labouchere should not be committed for contempt, and three days before the Motion was due to be answered, Sir George Lewis brought Mr. Labouchere to Clarke's Chambers in Garden Court to consult him. Clarke advised Labouchere to stick to his guns and decline to apologise. In giving this advice he was undoubtedly taking a risk, especially as Sir George Lewis was not particularly favourable to this course. He made it clear to Labouchere what the risk was. "Remember," he said, "if my advice is wrong, it is you who will go to prison, not I." "All right," was Labouchere's answer, "I don't mind, but I wish they had not put it for Tuesday for that's the day when I write my libels." He added that Clarke would have to argue the matter himself. Sir George Lewis, though not much liking either the advice or Labouchere's acceptance of it, sat down to draft the Affidavit, during which time Labouchere, who was sitting on the table smoking cigarettes would, to Sir George's great annoyance, keep on talking to Clarke about politics. On the following Tuesday, Clarke duly argued the Motion before two Judges, who were divided, one for and one against. This meant that Labouchere was discharged, and that the effort to commit him for contempt of court had failed. Not only had Clarke vindicated his judgment; he had won in Labouchere a firm friend for life.

The Libel case of *Robertson v. Labouchere* remained to be heard, and came up before the Lord Chief Justice and a special jury three months later. Clarke, of course, again appeared for Labouchere, but this time was led by Charles Russell, Q.C., while Robertson was represented by Serjeant Ballantine and two juniors. The case lasted over a week and contained much detailed evidence as to the financial position of the Company, which is of no interest to-day. The short issue in the case was as to whether Robertson had been dismissed, and if so whether it was for dishonesty. The case took a somewhat peculiar course because on the third day, at the conclusion of the Plaintiff's case, Ballantine was seized in Court with a fit. This distressing episode produced "a painful sensation in Court" and caused the Lord Chief Justice to say "in a tone of deep feeling" that as this case required all the powers of advocacy on either side—"and everyone knows what my brother Ballantine's powers are"—he would adjourn the case till the following Monday. It was not in fact then proceeded with, as the Lord Chief Justice had by that time contracted "fog in the throat."

When at last it was resumed—with Serjeant Parry now brought in to assist Serjeant Ballantine for the Plaintiff—it proved to have been worth waiting for. It was Clarke's task to examine Labouchere in chief, and Labouchere, who was a man always inclined to follow his own bent, insisted, contrary to Charles Russell's advice, on stating in evidence that Ballantine had attended a Directors' meeting of the Aquarium and there stated that Robertson's conduct was of a criminal character. There ensued a furious scene, but Labouchere insisted on his right to give the evidence, and challenged Ballantine to go into the witness-box and deny it, an invitation of which Ballantine did not avail himself.

There was one incident in the case which Labouchere asked Clarke not to put to him in examination in chief as he wanted to keep it for Ballantine, who knew of it and would be sure to ask about it. So he did. He asked: "Did not Mr. Robertson show you an opinion of Mr. Karslake that he had acted quite correctly in these

matters?" "Oh, yes," said Labouchere, speaking very slowly, "I will tell you about that. He told me he had Karslake's opinion on his side. So I said 'Yes, but which Karslake? If it's Sir John's I'll look at it, but, if it's the Mr. Karslake who believes in the Claimant* you may take back his opinion for I don't care a rush about it.'" There was a shout of laughter in Court and the Chief Justice was delighted.

Labouchere was in fact rather too much for Ballantine, and would probably have been victorious even without the aid of Russell's long speech to the jury, which had such an overpowering effect on one of their number that he retired in a fainting condition, leaving the verdict to be considered by only eleven good men and true. Their verdict was in favour of the defendant, and Clarke had won his first big case for Labouchere.

He did not always appear for Labouchere in cases arising out of Labouchere's affairs. He was briefed once in the defence of a man named Crowe, who was charged with forging Labouchere's name to certain cheques. Labouchere's banking habits were curious. He never had a pass book or a cheque book. All his cheques were written on notepaper in his own hand, and the cheques when paid were never sent to him. So it happened that his current account was forged upon to the extent of £16,000 before he discovered it, and then it was only by accident that he found out. He was at his bank one day when the clerk, referring to the account, placed the book on the counter so that Labouchere could see the entries. He saw that a cheque for £105 had been paid the previous day, which puzzled him as he could not remember having signed such a cheque. Consequently he asked to see it and on its production proclaimed it a forgery. He then asked to see some more cheques and a bundle was produced, out of which Labouchere produced several which were forgeries. He agreed with the bank not to go back beyond a period of two years, and they promised to replace any money paid out on forged cheques during that period. This turned out to involve a sum of about £14,000.

* A reference to the Claimant in the famous Tichborne Case.

Labouchere was not only one of the richest men whom Clarke knew ; he was also one of the wittiest. Clarke was fond of telling the story of how Labouchere called on a lady and began telling her the story of the latest society scandal. After a time the lady appeared very uncomfortable and said : " I am sure, Mr. Labouchere, you can't be aware that the lady you are talking of is my cousin." " My dear Madam," replied Labouchere in his most courtly tones. " Surely you don't imagine that I would tell such a story outside the family ! "

As a young man, Labouchere had been in the Diplomatic Service, where his industry had left a good deal to be desired. One day, he received a letter from the Foreign Office appointing him an Attaché at one of the smaller Embassies. To this he paid no heed. Three weeks later, he met in Pall Mall Sir Edward Hammond, the most prim and severe of permanent under-Secretaries at the Foreign Office. " Why, sir," said Hammond. " What are you doing here ? Did you not get your instructions ? " " Yes, I did," replied Labouchere, " but as I could not find the place on the atlas, I thought it was one of your jokes." Another time he told Clarke of how he was appointed to a post in Vienna. A month or so later he wrote from one of the German watering places to say that as there was no allowance for travelling expenses he supposed that he was intended to walk, and that was as far as he had got.

In a period when differences of political opinion were far more of a social barrier than they have since become, Clarke and Labouchere remained good friends. Each respected the fighting qualities of the other, and Labouchere admired Clarke's expert skill in the Courts as much as Clarke admired his wit.

CHAPTER VI

DEFENCE OF HARRIET STAUNTON AND INSPECTOR CLARKE

CIVIL actions of the importance and character of Robertson *v.* Labouchere were extremely lucrative. It was, however, the part which he played in two great criminal cases which followed each other in 1877, which made Clarke's name familiar to the general public as a whole. Before Harriet Staunton's case he was known in the Temple as a rising and accomplished Junior whose annual income at the Bar had topped the £3,000 mark. He was known, too, in Conservative circles, as an adroit and persuasive speaker, who was much in demand for Party meetings, and who was willing to give the benefit of his eloquent support so far as the requirements of his growing practice would permit. But he, whose name was for more than a generation to be synonymous with great advocacy, was not yet known outside these somewhat restricted circles. Two cases in the same year were to place him at one bound right in the fore-front of popular attention: those were the case of Harriet Staunton and the case of Inspector Clarke, known as the Detectives' case.

The case of Harriet Staunton exercised a most powerful effect upon the imagination of the public. As so often happens, the case was prejudged from the first by the popular mind. The idea of a woman of weak intellect being cheated out of her inheritance and starved to death by her husband's wicked relations was one of irresistible fascination to a public grown used to the agreeable contemplation of this type of horror in innumerable Victorian novels. It is no mean tribute to the way in which this case was handled that a new interest was introduced in it before its conclusion, in the speculation as to whether a defence founded on a disease that was then generally unknown could prevail

against the prejudice of popular sentiment and that of the Judge himself.

Harriet Staunton herself had a curious family history, in which there reverberated the echoes of past litigation. In this, curiously enough, Clarke had himself played some part. Harriet Staunton was the granddaughter of Lady Rivers, who in earlier days was known as Nellie Holmes, and in Edward Clarke's own words: "was in the evil days of the Regency one of the most notorious of the fashionable harlots who flaunted their shame before the town." This did not prevent her from contracting a matrimonial alliance a considerable time later with the last Baron Rivers. They parted somewhat unconventionally at the church door, never to meet again, and on Lord Rivers's death in 1880 the title became extinct. But though there were no offspring of her marriage, Lady Rivers had had a daughter many years before, who passed as her niece. This lady married a coachman named Richardson, and these two were the parents of Harriet, who was the victim of the notorious crime at Penge.

An elder sister of Harriet Richardson's, a remarkably attractive young woman, had married William George Howard, heir-presumptive to the Earldom of Wicklow. This offshoot of a noble House had the doubtful taste to die of delirium tremens in a Dublin brothel in the arms of a woman named Mary Lloyd. Certain Insurance Company litigation had followed Howard's death, in which Clarke had had a twenty-guinea brief—in his early days at the Bar when this was an unusually high figure—as Junior to Serjeant Parry. But this by no means exhausted the litigation arising out of Howard's death. Mrs. Howard, Harriet's sister, who was supposed to have borne no children to Howard, somehow acquired a child for whom she claimed the Wicklow peerage. There resulted the famous Wicklow Peerage Case, which was heard by the Committee of Privileges in the House of Lords in 1870. In this Clarke played no part, but curiously enough the solicitor whom Mrs. Howard had employed was a client of his, and when a dispute arose about the solicitor's charges in the case

Clarke spent three days in 1874 in the cross-examination of Mrs. Howard, who now by a second marriage had become Mrs. Casabianca.

She was not the only one of the family to make a second marriage, for her mother, Mrs. Richardson, married after her first husband's death, a country clergyman called Butterfield. By the death of old Lady Rivers in 1872 all three ladies became possessed of some means, the share of the two sisters being £2,000 each in possession with a further £2,000 each in reversion. This was not perhaps great wealth, and Harriet's attractions as a wife were diminished by the fact that she was of somewhat weak intellect. But her means were sufficient to attract a young auctioneer's clerk, called Louis Staunton, who at twenty-three was twelve years younger than Harriet and possessed of that flashy appearance which in some quarters passes for good looks. Mrs. Butterfield, who was not unnaturally not convinced of the disinterestedness of the young man's motives, tried to have her daughter declared a lunatic and to have her money placed under the protection of a Court of Chancery. In this, however, she was unsuccessful, and the marriage duly took place in June of 1875. The Stauntons took a small house in Brixton, which was furnished with part of what had been Harriet Staunton's legacy. As the law then stood, there being no settlement, all Harriet's property, existing or prospective, passed on her marriage to her husband. In the following month Mrs. Butterfield went to call on her daughter and son-in-law in Brixton. She was very coldly received, and a few days later received a letter asking her not to call again. There was nothing very unnatural in this, having regard to her efforts to stop the marriage and to have Harriet certified as a lunatic. But, though this rebuff by no means ended Mrs. Butterfield's maternal interest in her daughter, and though she made many other efforts to see her, this short and frustrated visit was the last occasion on which she saw her alive.

In March of the following year Harriet gave birth to a boy. During her confinement Alice Rhodes, a pretty young girl of eighteen, whose sister was married to Louis's brother,

Patrick Staunton, came to live in the house. Harriet very soon had reason to believe that an immoral relationship had sprung up between her husband and Alice. As a result of the quarrelling and unhappiness which ensued at the house in Brixton, Harriet and the child were sent down to Patrick Staunton's small house, Woodlands, in the village of Cudham in Kent. Harriet arrived there in August as a paying guest, giving the Patrick Stauntons a pound a week for her board and lodging. In October, Louis Staunton and Alice Rhodes, now passing openly as man and wife, came down to take up their residence at a farm called Little Grays near the Woodlands. One of the first things which Louis did on his arrival was to take Harriet to London to sign a Deed disposing of her reversionary interest under the Will of Lady Rivers. This was Harriet's last appearance in the outer world. Thenceforth her life was restricted to the narrow sphere of the Stauntons' cottage, and her welfare was at the mercy of their caprice.

The following spring Mrs. Butterfield, discovering that the Patrick Stauntons were living at Cudham, went down there to see if Harriet was there. She was denied access, and went on to Little Grays, where she was hustled out of the house with scant ceremony. On her return, she communicated with the police, who watched Little Grays, but naturally without result, as Harriet was at Woodlands. On April 8th, 1877, Harriet's little boy was taken by Patrick Staunton to Guy's Hospital and died there that evening. Four days later Louis and Mrs. Patrick reserved lodgings at 34, Forbes Road, Penge, for a lady "inclined to be paralysed." At the same time, they said they wanted better medical advice and were advised to see Mr. Longrigg, who said he would call next morning. That evening the four Stauntons and Alice Rhodes took the 8.26 train from Bromley to Penge. On arrival Harriet, speechless and barely conscious, was taken to Forbes Road. Louis went twice for the doctor who was out, and eventually with Patrick took the last train back to Bromley. At ten o'clock next morning Mr. Longrigg—who was a member of the Royal College of Surgeons, but not a

physician—was fetched by Alice Rhodes; but by 1.30 Harriet was dead.

A certificate of death was given, and nothing might ever have been heard of the great Penge tragedy. But that Friday, April 13th, was unlucky for the Stauntons. Mr. Casabianca, Harriet's brother-in-law, had occasion on that evening to go into a shop at the corner of Forbes Road. Now Forbes Road was on the boundary of Kent and Surrey, the houses on one side being in Kent and those on the other being in Surrey. Consequently, it was quite natural that a young man should come into the shop to ask where a death which had taken place that afternoon in Forbes Road, should be registered. This would not in the ordinary way have particularly interested Mr. Casabianca, nor was the young man who made the enquiry known to him by sight, for of course he had never seen the Stauntons. But when the young man went on to say—though there was no reason to say it—that the lady whose death was to be registered had been brought from Cudham, his attention was at once arrested. Was that not where Mrs. Butterfield had made her fruitless enquiries? He lost no time, but went to the police next morning and asked that enquiries be made. The certificate of death was withdrawn and an inquest ordered. Meanwhile on April 19th a post-mortem examination was made by four doctors, who agreed that death had been caused by starvation.

The result of this post-mortem was to reveal a shocking state of affairs. The body was terribly emaciated and revoltingly dirty; the skin of the feet was horny, a condition that would be produced by walking for some period without shoes or stockings. The normal weight of the body for a woman of Harriet Staunton's height should have been upwards of ten stone. Harriet Staunton was thin, and not at any time up to average weight; but the body at post-mortem was found to weigh only five stone four pounds. There was a tubercular deposit on the left lung and also upon the membranes of the brain. There were certain symptoms which seemed to suggest poisoning, but analysis did not bear this out. The doctor had given his certificate

that death was caused by cerebral disease and apoplexy, but the conclusion now arrived at was that death was caused by starvation. There was no suggestion at the time of death being due to Addison's disease, diabetes, or tubercular meningitis, which were the causes of death later relied on by Edward Clarke, and the tests which would positively have established or disproved this theory, were never taken.

Clarke was briefed to appear at the inquest, but was unable to attend as he was engaged elsewhere. Consequently, Mr. Percy Gye went down on the first hearing, to be reinforced by Mr. Douglas Straight at the second. They found that popular feeling had been inflamed by the disclosure of the results of the post-mortem to a passion of resentment against the Stauntons. So strong was local opinion against them that the trial was removed from Assizes where it would normally have been taken, to the Old Bailey. Although both the Attorney-General, Sir John Holker, and Clarke's friend Hardinge Giffard, who was now Solicitor-General, were to appear for the Prosecution at the trial in September, Messrs. Lewis and Lewis, who were solicitors to all the prisoners, decided not to brief Leading Counsel, but to rely for the defence upon experienced Juniors. Of these, Edward Clarke was briefed for Patrick Staunton, Montague Williams for Louis, Douglas Straight for Mrs. Patrick, and Percy Gye for Alice Rhodes. The briefs were delivered in July, and these Counsel held a conference to discuss the best method of defence. At this conference it was decided that the cross-examination of the Prosecution's medical witnesses, on which the whole case hinged, should be left to Edward Clarke. So it was that he gave up part of his intended holiday in the Long Vacation to the study of Tuberculosis, then a disease much less familiar and subjected to much less expert research than it has since become, and to the symptoms that should accompany death by starvation. In his studies, he had unexpected assistance of inestimable value. He had some time previously at the house of a friend and client met Doctor Bristowe, senior physician to St. Thomas's Hospital. Doctor Bristowe, seeing the report of the post-mortem on Harriet Staunton, came to

the conclusion that the symptoms were tubercular, and wrote a private letter to Clarke to that effect. He came to a consultation with him, and assisted him throughout the trial, in which he gave evidence, as did Doctor Payne, a most distinguished pathologist. The conclusions that they came to were that death was not caused by starvation, some of the symptoms of which were absent, but by tubercular meningitis or Addison's disease.

The trial opened on September 19th, 1877, amid enormous public interest. There were really two distinct points in the case. First, there was the medical question: was death due to starvation or to some other cause? Secondly, there was the question of the treatment of Harriet Staunton at Woodlands: had the prisoners treated her in the way that people would, who wished to expedite her end? To establish their case on the second issue, the Prosecution, which was conducted with conspicuous fairness by Sir John Holker, a man for whom Clarke had the highest admiration, relied mainly on the evidence of Mrs. Butterfield and Clara Brown. With regard to Mrs. Butterfield's evidence of rebuffs and refusal on the part of the Stauntons to allow her to see her daughter, Clarke had a good answer: might it not equally well have been the wish of Harriet not to see her mother, who was associated in her mind with the effort to have her certified as a lunatic? The case of Clara Brown was not so simple. She was a girl of sixteen, a cousin of Mrs. Patrick and Alice Rhodes, who, being an orphan, had gone into service with the Patrick Stauntons. As none of the accused was allowed to give evidence, this young girl was the only person who could speak to the events that had taken place in Woodlands. She had given evidence at the inquest to the effect that Harriet had been well cared for at Woodlands, had been in good health until within a few days of her death, and had known of the relationship between her husband and Alice Rhodes a little way off. Such was the effect of her original declarations, which were of course, very favourable to the Stauntons' case. At the trial, however, she dissented from all her previous evidence, which she said had been given under the coercion of the

Stauntons. Her evidence at the trial told a very different story of the neglect, the cruelty, and the starvation, which had been the unhappy lot of poor Harriet Staunton at the hands of her unnatural relatives. Clara Brown's evidence created a profound impression, the more so as it accorded with the general impression which had been preconceived of the circumstances of the case. Her evidence was especially hostile to Patrick Staunton, who by her account, had struck and ill-treated his defenceless sister-in-law. Clarke subjected her to a close cross-examination, pressing upon her the difference between her present evidence and that which she had given before the Coroner, and reminding her of the Coroner's injunction to speak all the truth without any fear.

He was able to make of this cross-examination a foundation for argument in his closing speech, but it was a mere skirmish in comparison with the long battle with the Prosecution's medical witnesses. It was a battle which was fought on the enemy's own ground but conducted with great skill by Edward Clarke. He endeavoured to show that the post-mortem had not been carried out with sufficient care owing to the fact that the doctors had had in mind first, poison, and then starvation, and that at no time had they directed their attention to tubercular meningitis, which was the true explanation of death. That this was so was in his view rendered probable by the presence of tubercular matter in the meshes of the brain and in the lung. As to death by starvation he put it to the Prosecution's witnesses that the two elements which one would expect to discover in such a case, thinness of the coat of the stomach and paleness of the brain, were absent. He also put it to them that the darkening of the skin which had taken place was a symptom of diabetes, but that the tests which would have established whether or not it was diabetes had not been taken on account of the preconception existing in the minds of the doctors. The Prosecution's medical witnesses would not admit of these causes of death, and his cross-examination had little effect upon Mr. Justice Hawkins, who was prejudiced throughout the case. It had more effect, however,

on the jury, and still more on the medical profession, with whom in this case the last word was to lie.

As the prisoners could not give evidence, the only evidence for the defence was the medical evidence of Doctor Bristowe and Doctor Payne. For the rest, it was a matter for the speeches and argument of Counsel. The speech of Edward Clarke in this case, delivered on the sixth day of the trial, was a masterpiece of eloquence. He had prepared it with great care at Brighton in the weekend which divided the case for the Prosecution from the opening of the case for the Defence, and in the result it was a memorable achievement in the annals of forensic eloquence. He began, conscious of the feeling of prejudice existing against his client, with an adroit bid for sympathy. Douglas Straight, in his defence of Mrs. Staunton, relied on the plea of marital control. With regard to this Clarke said: "Patrick Staunton at least has nothing to complain of with regard to his wife. He has nothing to say as to her, except that if she committed any fault, that fault was committed under his control and on his culpability, and if she made any false statements afterwards in the course of the case, those statements were made to shield him."

Having thus put his client in as chivalrous a light as possible, he went on to discuss the probabilities of the case and the question of motive: "Why, gentlemen, what is the motive? In his case, it was no motive of money. So far as there was money, if money was of any importance in the poor little household that seems to have existed in that little cottage at Cudham, so far as money would be of value, money was paid to keep her, and it was by her life and not by her death that he would profit. As for the gratification of passion, he has not been implicated in the tragedy of guilty passion which runs in this case alongside with the terrible tragedy into which you are enquiring. . . . Surely it is monstrous to suppose that, without motive, he should lend himself to a plan so difficult in its execution, so horrible in its progress, and so certainly fatal to him. If this death was actually worked out in that way, if Harriet Staunton was wilfully brought to her death by the deprivation of food

in that house, then for days, for more than a month, Patrick Staunton must have had before him every day and every hour, present to his nightly dreams and to his waking thoughts, a crime which one could scarcely contemplate so long without an unutterable horror, such a horror as must surely have turned him from his dreadful purpose."

There followed an attack on the evidence of Clara Brown : "Of these five people who alone could give direct evidence as to what took place at Cudham, four are silent in the dock and one is a perjurer in the witness-box, and upon that evidence and with that evidence you are asked to deal." "In any case," he pointed out, "Clara Brown has given no evidence of any complaint by Harriet Staunton of pain or suffering or any request that a doctor should be called upon to attend her." He then proceeded to go through the medical evidence, pointing out the deficiencies of the post-mortem examination, and arguing strongly for tubercular meningitis, or diabetes, as postulated by the evidence of Doctor Payne and Doctor Bristowe and reinforced by his own cross-examination of the medical witnesses for the Prosecution.

At the end of a lengthy speech Clarke came to his peroration. Of the peroration to his speech in defence of Patrick Staunton, Clarke himself has said : "Judging it with the impartial detachment of old age I think that in its personal appeal to the hearers, which covers an argument that is maintained to the very last sentence, it more nearly realised my ideal of what a peroration should be than did the closing passage of any other speech I ever made." Rhetoric loses much when reduced from the warm vibrant tones of the speaker to the cold medium of the printed word. To get the real effect of the peroration it has to be translated back into the scene in which it was delivered. In the Court was the absorbed concentration of interest for days on end on one issue : will they hang or not ? Outside the nation as a whole was gripped in the excitement of the same issue. The peroration was delivered at the conclusion of a long and closely knit argument, which was recognised by all as a triumph of effective and masculine

logic. Having laid steady and determined siege to their reason, Edward Clarke called up all his reserves of voice and gesture and personality to carry by storm the citadel of their emotions. "He has suffered the most terrible punishment, gentlemen, of months in gaol awaiting his trial for life, knowing that, while he lay in one cell of that gaol, in another cell of that shameful birthplace his wife is bringing forth the child of their love; having to give up everything that he possesses to supply the means of facing a criminal trial like this; he has had to sit—I was about to forget the worst of all—for five or six days listening to these discussions going on, and I fear very much, thinking now and then how much was being left unsaid that should be said for him, how much was being left unasked that might have brought an answer in his favour. All this would have been to him an unsupportable agony, it would have constituted to me in this trial a responsibility almost too great to bear, if he, and I as his advocate, had not been sustained by the knowledge of the way in which a jury deals with a question of life and death.

"Gentlemen, in a case of this kind, would you venture as Christian men to pronounce a verdict of guilty unless you were satisfied beyond reasonable doubt by evidence which was accurate, and clear, and trustworthy, and satisfied you to the hilt of the matters which were alleged, and with which you were asked to deal? Will you venture to rely thoroughly upon the controverted conclusions of the doctors who have dealt with the medical evidence, or upon the shameless evidence of that girl who came into the witness-box admitting herself a perjurer before the coroner, and proclaiming herself in this Court to be the accomplice of the crime which she denounces?

"Gentlemen, human justice is depicted as blind. It is not given to human justice to see and to know, as the great Eternal knows, the thoughts and feelings and actions of all men. She has to depend upon what she hears. She must depend upon recollection. She must depend upon testimony. She must depend upon inferences. How should she deal with the irrevocable issues of life and death unless

those recollections are exact, that testimony trustworthy, those inferences uncontradicted? How should she lift the sword to strike—and you, gentlemen, guide her hand to-day—while at the moment that the accusing voice is in her ear denouncing the crime, the echo of that very voice is heard proclaiming that the prisoners are innocent, and passionless science steps to her side to warn her that there may have been in truth no crime committed? ”

So far as Mr. Justice Hawkins was concerned, the peroration and the speech which it concluded fell on deaf ears. His summing-up, which started in the morning, went on all day, through the long hot afternoon into the evening, until he had summed up for nearly eleven hours, so that it was nearly ten o'clock at night when the exhausted jury retired to consider the verdict on which hung the lives of the four young people in the dock. Hawkins had, as the saying is, summed-up for a conviction in no uncertain way. Clarke thought then, that the summing-up was unfair, and retained that view throughout his life. Other cases in which he appeared before Hawkins reinforced him in that view, so that his final estimate of him was harsh in the extreme: “ Sir Henry Hawkins was the worst Judge I ever knew or heard of. He had no notion whatever of what justice meant, or of the obligations of truth and fairness.”

By the time the jury returned it was nearly midnight, and the flickering candles helped to lend a ghostly and terrible atmosphere to a scene full of high drama. The jury came in and one by one they found the prisoners guilty. In the centre of the dock Patrick Staunton sitting hand in hand with his wife, showed that in that respect at least he was not unworthy of what his counsel had said of him, as he strove manfully to comfort his wife. Louis and Alice Rhodes, pale with terror, stared unseeing into the Court, and gave each other no heed. The words of the Judge in sentencing them were terrible in their severity: “ You have been found guilty by a jury of your country of a crime so black and hideous that I believe in all the records of crime it would be difficult to find its parallel. With a barbarity almost incredible, you plotted together to take

away by cruel torture the life of a poor innocent, helpless and outraged woman."

But although Judge and Jury had decided against the Stauntons, there were forces in the outside world which worked on their behalf. Charles Reade, realising in how many aspects the case was unsatisfactory, wrote a series of letters to the *Telegraph*, in which he dissected the case against the prisoners with great critical power and destructive effect. In these efforts he was supported whole-heartedly by Clement Scott. It is doubtful, however, whether the labours of these eminent literary men could have been crowned with success but for the powerful support which came from the medical profession. The *Lancet* took up the matter from the medical point of view, and 400 doctors, with Sir William Jenner at their head, signed a declaration to the effect that the findings of the post-mortem were characteristic rather of disease of the brain than of starvation. So Clarke, although he had failed to win the verdict in the Court, had carried the day with this unusual Court of Appeal.

The prisoners were all reprieved, and their sentences commuted to penal servitude for life: Alice Rhodes was very soon set free. Clarke's client, Patrick Staunton, died in prison soon after, but his wife was released after a few years, and under another name attained a position of prosperity. Twenty years later Clarke was asked if he could do anything to assist Louis Staunton, now released, in earning a living. Clarke had a long interview with him, and gave him £100, which he could put into the business of a relative whom he proposed to join. A few years later Louis Staunton, under a new name, opened a business on his own account, married again and prospered. Such were the destinies of those whom popular prejudice and the verdict of the Court had marked out for the gallows.

Before the conclusion of the Staunton trial, Clarke had been briefed in what came to be known as The Detectives' Case, so called because three Chief Inspectors and one Detective-Inspector of Scotland Yard were put on their

trial for conspiring to defeat the ends of justice in collusion with some of the ablest and most rapacious criminals of the day. The evidence of the trial revealed such lack of co-ordination in the work of criminal investigation and such deplorable leakages of information that it was realised that the system was unsatisfactory. The Attorney-General, in opening the case at their trial, said that the disclosures "came as a thunderclap to the community and spread over England the greatest possible alarm." This may seem to a generation which has grown used to daily alarms and excursions on the most formidable scale to be putting it rather high. But in the golden late afternoon of the Victorian era, when peace and plenty seemed to be comfortably and permanently installed on the foundation of security of property, any such threat to that security as was contained in the venality of its chief defenders was of necessity most alarming.

The downfall of the detectives resulted from the activities of some exceptionally clever crooks, who were convicted of fraud and forgery at the Old Bailey on that same April 13th, 1877, when Louis Staunton's injudicious reference to Cudham in the shop at Penge gave Edward Clarke his other sensational case of that year. The conviction of Harry Benson and William Kurr and their associates brought to an end a picturesque career of fraud on a grand scale. Harry Benson was an especially interesting character. He was at the same time *sauve*, plausible and ruthless. Of the former qualities he had given evidence by imposing upon the Lord Mayor of London, Mr. Alfred Rothschild and Colonel Stewart Wortley, in a fraud which he perpetrated upon the French Relief Committee in 1871. The desperate quality of his courage was shown when he attempted to commit suicide by setting fire to his bed in prison and by remaining there so long that he became a cripple. Kurr, an equally determined if less subtle personality, was a former betting tout who set out to swindle the public by means of fraudulent betting agencies. Kurr and Benson joined forces in order that Benson's knowledge of languages and connections should enable them to conduct

these fraudulent operations on a bigger scale. Kurr already had other coadjutors in the persons of Walters and Murray, who assisted him in carrying on his betting agency in Edinburgh known as Phillip Gardner and Company. Before Kurr had made Benson's acquaintance in 1874, he had collected an equally useful ally of quite a different sort in the person of Detective-Inspector Meiklejohn of Scotland Yard, whose function it was to give Kurr information which would enable him to elude detection and arrest. Thus it was that Meiklejohn warned Kurr and Benson when danger threatened the new agency, which they had formed under the name of Archer and Company or The Systematic Investment Society. As the profits of this ran into many thousands it was possible to give a present of £500 to the invaluable Meiklejohn. Some time later, Chief Inspector Druscovich, who, on account of his knowledge of foreign languages, was in charge of foreign criminal investigation, was drawn into the net. His position had made him especially dangerous to Kurr and Benson, who were using Benson's linguistic abilities to perpetrate betting frauds in France. Finding himself hard pressed for £60, in a fatal moment Druscovich asked Meiklejohn if he could suggest a means of assisting him. Meiklejohn could: he knew the very man. The very man, of course, was Kurr, and though Druscovich demurred at first, he accepted Meiklejohn's assurances and became Kurr's debtor. From that it was only a short step to becoming his reluctant tool. He never became the enthusiastic ally of Kurr and Benson that Meiklejohn was, but they were able to count on his not being able to take any effective action against them. When a short time later Inspector Palmer drifted into much the same position as Druscovich, the painstaking pair were in the happy position of knowing that they had got three out of the four men immediately under Superintendent Williams at the Yard. The fourth man was the Senior Chief Inspector, George Clarke, a man of nearly forty years' vigorous and successful experience in exposing and bringing to justice just that type of fraud in which Kurr and Benson specialised.

How to deal with Inspector Clarke? That was the problem which worried Kurr and Benson. They had the more reason for alarm since Clarke was able to put an end to the Society for Insurance against Losses on the Turf, and to secure the arrest of Walters and Murray, who absconded from bail. There was also a warrant issued for Kurr, although he was not arrested. Clearly the man to deal with Clarke was Benson, who was living in state at Shanklin with his former landlady, Mrs. Avis, as house-keeper. He lived under the name of Yonge, but let it be understood that he was in reality a member of the French nobility, and as such was accepted by many of the discerning society of the island. He was not connected in the official mind with the Walters-Murray frauds, and therefore he sent a message to Clarke to tell him that he could give him some information as to the frauds, but that as he was a cripple it would be necessary for Clarke to come down to Shanklin to see him.

Clarke went down to Shanklin, where Benson told him that his reason for asking him to call was to solicit his aid in securing that he should not be called as a witness in the case of Walters and Murray, as the giving of evidence would be a grave inconvenience to one in his crippled state. He then produced an unsigned letter from Clarke to Walters, written the previous year, which ran: "Sir, I shall be glad if you could make it convenient to call at my house from 8 to 9 p.m. this day. Very important. Don't show this or bring anyone with you. If you cannot come I'll be at Charing Cross Station at 12 noon to-morrow." This letter, which might be an ordinary letter addressed to Walters in the hope of securing information from him might also bear the less creditable construction that it was a letter sent with a view to the Inspector receiving a bribe from Walters. This, according to Benson, was what Walters said the letter referred to. Inspector Clarke denied having received any money, and asked Benson to hand over the letter. This Benson, who had in any case taken the precaution of having the letter photographed, refused to do. What Benson did do was to offer Clarke

£100 to keep him out of the witness-box. This the Inspector refused, as he did the twenty sovereigns wrapped in paper which Benson pressed upon him as he was taking his leave. Thus Benson had not succeeded in his object of getting Clarke into his pay, but he had established contact with him from which he hoped much. He wrote to the Inspector almost at once, a letter which did not survive. The reply to it, however, was rather strange: "I am astonished that you, a stranger, should know anything of my character, good, bad or indifferent. Thank God, I am not afraid of any man, and should not care if all my actions were published to the world to-morrow. You have excited my curiosity, and I appeal to you as a gentleman to let me know what you have heard about me. You may depend on me in no way compromising you."

Correspondence was entered into between the two in which Benson several times refers to his debt to Mrs. Clarke and referred to "exchanging promises in our last interview—your's was that you would give me an early opportunity of proving my friendship." In addition to this correspondence there were numerous interviews between the two at Shanklin, only the first of which was made the subject of official report by the Inspector in which he had said that "Yonge was a scoundrel but that he had no information of value with regard to the frauds." On the second of these visits Benson later alleged that he had given the Inspector £50 in gold, and subsequently a further £150, also in gold.

The eventual arrest of Kurr and Benson followed the success of their biggest exploit. This was a scheme by which the conspirators pretended that a Mr. Montgomery was so successful at betting, and had made so huge a fortune out of the bookmakers that they in self-defence had boycotted him, and would no longer accept his bets. Montgomery, however, was not thus easily to be put off. He intended to adopt the method of having agents abroad to bet for him in their names, and to retain ten per cent. of those winning bets which Mr. Montgomery's skill assured would be the vast majority. Kurr and Benson brought

out a paper called *The Sport*, which, although a racing journal, was confined to a few hundred copies. These, together with a translation into French by Benson of the article dealing with the Montgomery affair, were posted to some of the leading families of France. Lest the shrewdness of the French should lead them to enquire what motive induced Mr. Montgomery to give the benefit of ten per cent. of his great winnings to foreigners rather than to his own countrymen, it was pointed out that it was contrary to the rules of the Jockey Club in England that bets in this country should be made under an assumed name. The details of this scheme were worked out at a dinner at Benson's lodgings at which Meiklejohn was actually present. The following month Kurr alleged that he saw Inspector Clarke in the Inspector's house in Great College Street, where he explained to him the Montgomery scheme and gave him £50 in gold. At the same time they made an arrangement that if Clarke wanted to see Kurr he should simply send him a piece of blank paper or blotting paper, enclosed in an envelope, addressed in Kurr's handwriting, which he left with him for that purpose.

The Montgomery fraud was an instant and tremendous success. Fifteen thousand pounds was netted within a few weeks, over ten thousand pounds of which came from a rich French widow, the Comtesse de Goncourt. Unfortunately for Kurr and Benson, it was too successful with regard to her. When they had received ten thousand pounds of her good money and she had various worthless cheques representing her "winnings," Benson wrote to her urging her to stake thirty thousand pounds on a certain race, as this would provide her with the best opportunity of making a large fortune that she would ever have in her life, telling her that if she could not raise the entire amount he would put something towards it himself. The Comtesse, being by this time somewhat short of ready cash, but of undiminished enthusiasm and unimpaired confidence, went to her lawyer with a view to raising more money to continue this profitable line of investment. It did not take the lawyer long to tell her that she was in the hands of swindlers ;

and instead of receiving the thirty thousand pounds, Kurr and Benson received the unwelcome attention of a Mr. Abrahams, a London solicitor, into whose hands the French lawyers put the case.

Even so, Kurr and Benson were not unduly alarmed. The investigations at Scotland Yard were naturally in the hands of Druscovich, from whom they had nothing to fear. At the same time it was necessary to keep the other detectives sweet. On September 25th, according to Kurr's story, he received a plain piece of blotting paper and saw Clarke in consequence, who warned him that investigations were on foot. On October 4th he said that he saw Clarke again and gave him the 150 sovereigns in gold. Time went by and still the conspirators, who were in Scotland, arranging for the perpetration of new frauds, evaded arrest. On November 10th, Kurr, who had assumed the alias of Gifford, received a telegram of warning, which was followed up by a letter in Inspector Palmer's handwriting. The following day there came an envelope addressed to him in his own writing containing a piece of blotting paper with the words, "Keep the lame man out of the way at once" upon it. The lame man was a reference to Benson, and the suggestion, of course, was that this was sent by Clarke in furtherance of the arrangement made between him and Kurr. Benson, Kurr's brother, and another of their assistants called Bale, went to Rotterdam and were there arrested on November 20th. Kurr himself, who remained behind in Scotland, was not arrested until December 31st. Whether, in view of the close contact which they had opened up with Scotland Yard, they would ever have been arrested, but for the fact that Mr. Abrahams had called in private detectives as well, and thereby forced the pace, must remain a moot point.

When at last Kurr and Benson were arrested, there could be no question of their guilt and subsequent conviction, and Baron Huddleston duly sentenced Benson to fifteen years' penal servitude, Kurr and his brother to ten years' penal servitude, and Murray to eighteen months' hard labour. In these proceedings Edward Clarke had no part. Scarcely, however, were Kurr and Benson in prison, before

they made statements implicating Meiklejohn, Palmer, Druscovich, and a solicitor named Froggatt whom Kurr had employed. These men were arrested and placed on their trial. Inspector Clarke was not at that stage implicated ; in fact, he himself arrested Froggatt and was called as a witness to give evidence at the preliminary proceedings at the Police Court. After his evidence, however, he was himself arrested and placed in the dock with the others, at which Meiklejohn and Palmer wept. The fact that these two veteran Inspectors of Scotland Yard, rendered tough by experience of years in their Department, were thus affected, is an indication of the regard in which they held their Senior Inspector. But for all that, he was now in the dock on a grave charge of conspiring with convicted criminals to defeat the ends of justice. Nor had he much money for his defence : in fact, one of the difficulties at the root of all the trouble was the very low rate of remuneration paid in respect of such responsible work. Inspector Clarke went to Mr. George Lewis, who naturally sent him to Edward Clarke, whose dramatic closing speech for the defence in the Staunton case was at that time fresh in his mind as in that of the public. The Inspector solemnly assured Clarke of his innocence, and begged him to defend him for such modest fee as his means would allow. Clarke agreed to undertake the defence for a small fee and a refresher of five guineas a day, almost a nominal fee for a counsel of the standing which he had then attained.

The defence of Inspector Clarke was a matter of great interest. Had he been entrusted with the defence of any of the other prisoners, he would of course have done his best, but without any real expectation of success. Such was the weight of evidence against them that it would have been virtually impossible for any counsel to have obtained an acquittal. But the case of Inspector Clarke was different. It is true that if the evidence of Kurr and Benson was believed, he would be as certainly convicted as the others. But in the words of the Attorney-General in opening the case, " The evidence principally consisted of the statements of men whose character would not bear investigation and

who had embarked on a course of crime." Such evidence without corroboration would not be enough to convict. In the case of the other prisoners the corroboration was sufficiently strong to ensure their conviction. What of the corroboration in the case of Inspector Clarke? There were in the first place three visits to see Benson at Shanklin: secondly, there was the correspondence carried on with Benson: thirdly, there was corroborative evidence of a former valet of Benson's, who spoke to visits of Clarke to Benson, of a cabdriver who spoke to having taken Kurr to the Inspector's house in Great College Street, and of Benson's housekeeper, Mrs. Avis: fourthly, there was the fact that for the three months in which Meiklejohn and the rest delayed the arrest of the conspirators Inspector Clarke did not appear to realise, despite his own association with Benson, that his immediate subordinates were in fact responsible for the delay: fifthly, there were the frequent references to Inspector Clarke in the correspondence of the other Inspectors, which while they did not implicate him and were not technically evidence against him, were sufficient to show that for some reason or other the Inspectors did not anticipate interference from that quarter. Such were the difficulties which faced Clarke when, with Charles Mathews as his Junior, he appeared at the Old Bailey before Baron Pollock on October 24th, 1877, to try and secure a verdict for the Inspector against the evidence of the Prosecution, marshalled and presented by the two Law Officers of the Crown, his friend John Gorst, Q.C., and two junior counsel. It need hardly be said that the task was one of the most formidable.

The real interest of the case from the first centred on whether Inspector Clarke would be convicted or not. The case lasted over three weeks, of which the first week, containing the evidence of Kurr and Benson as well as the opening speech of the Attorney-General, was of vital interest, whereas the second and third weeks containing the evidence of the lesser witnesses, who proved the details of the story, were a somewhat dull prelude to the final excitement of the closing speeches.

The evidence of Kurr was of considerably less importance so far as Inspector Clarke was concerned than that of Benson. Kurr's story against Inspector Clarke was that of his visits to Great College Street. Edward Clarke cross-examined him very briefly, contenting himself with securing admissions that he could not with certainty fix all the dates of the visits and that when he made his first statement he had not mentioned the name of Inspector Clarke at all. In the whole of this case Edward Clarke kept his cross-examination short, following his rule of not cross-examining when he could not contradict. On the material in his hands in this case, a long and bustling cross-examination would probably have had the effect of producing repetitions of the story and thereby focusing the attention of the jury more closely upon them.

The crux of the case against Inspector Clarke was the evidence of Benson. If the Prosecution could show that Inspector Clarke must at all times have known that the Mr. Yonge of Shanklin was in reality an associate of Kurr's in the betting frauds, the presumption that the subject matter of the discussion at those interviews was bribery and a betrayal of official information was almost irresistible. Edward Clarke's task, therefore, in respect of Benson, was curiously complicated. He had not only to shake his testimony, which is the ordinary duty of counsel with regard to opposing witnesses: he had also to recreate the Mr. Yonge who had shone in the Shanklin society and could reasonably have been expected to take in even so shrewd a person as the Senior Chief Inspector of Scotland Yard. A swashbuckling, or even a destructive cross-examination, could not have availed for this second objective. Mr. Montague Williams, who appeared for Meiklejohn, had already harassed him in cross-examination, with the result that he looked even less like a member of the *beau monde* than before. But his very physical appearance, squatting with his crippled limbs on his chair in the dock, with his cropped hair and his convict's clothes loudly denying any claims to elegance, made it very difficult to think of him in any light other than that of his present situation. Edward

Clarke's initial task, therefore, was not further to depress the witness whose evidence it was his ultimate aim to discredit, but to make him appear, as far as possible, once again the suave and plausible character who having imposed successfully upon the Lord Mayor of London and Mr. Rothschild, might be expected not to find it beyond his powers to take in Inspector Clarke likewise. The opening question in cross-examination effected the same instant almost miraculous transformation in the witness's demeanour as did Rufus Isaacs's opening question to the poisoner Seddon. In that case the question, "Did you like her?" asked in respect of his dead lodger, whom he was charged with poisoning, seemed to puncture the confident, almost arrogant assurance of Seddon in a moment. Edward Clarke's opening remark had an equal effect upon Benson, but in the contrary way. "Now, Mr. Benson," he said quietly, "I have a few questions to ask you." In Edward Clarke's own words: "It was the first time for months that he had been spoken to in any tone of courtesy. His face lit up, he rose to his feet, bowed in acknowledgment, and stood with an air of deference waiting to reply." This was followed by a series of questions put to him with regard to his house at the Isle of Wight, the society he had entertained there, his education, connections, and so on, which Benson gladly answered. It was not until he had succeeded in thus putting before the jury the idea of Benson as a plausible and convincing person that Edward Clarke moved on to the real object of his cross-examination, which was to get Benson to admit that he had been able to give Inspector Clarke certain information to assist him in his duties of criminal investigation, and had held himself out as being in a position to give yet more. Having obtained these admissions with an economy of persuasive questions, put while the impression he had built up of Benson still remained, he ceased his cross-examination, having obtained the maximum of results with the minimum of repetition of facts harmful to his client.

Many of the smaller witnesses were of little importance to the case against Inspector Clarke, and during the giving

of their evidence Edward Clarke was engaged upon the preparation of his final speech, upon which he based his main hopes of success. But there was one witness, called for the Prosecution, of whom he had some hopes. That was Superintendent Williamson, who for long years had found in Inspector Clarke a most able and trustworthy assistant. Information was conveyed to Edward Clarke that the Superintendent was by no means hostile to his subordinate, and would in fact be glad if his evidence could do them any service. This was very far from saying that the Superintendent would make any effort to direct his evidence to this end, for he was a man whose conduct was ruled by the strictest probity. Edward Clarke, therefore, had to work out down to minute detail the form of questions which would draw from the Superintendent the greatest amount of help to his client. Having done this, Clarke was able to establish that his client had been the Superintendent's most confidential and trusted assistant; that he had been engaged for nearly ten years in the suppression of betting swindles and turf frauds; that he had obtained authority to make his visits to Shanklin, and had made his report upon them; and—perhaps most important of all—that it was with the Superintendent's sanction that the Inspector had put himself in communication with Walters in order to get information. This evidence was of the greatest value to Clarke's case, for he now had not only the picture of Benson as a plausible man moving in society, who held himself out as having valuable information to give, but also the picture of the Inspector as a senior and confidential Officer to whose discretion much would be left in any matter of gaining information which would further the ends of criminal investigation.

This was the view of the case which it was Clarke's concern to put before the jury in his final speech. It was not an occasion for a speech of much detail, for much of the detail of the case bore a suspicious complexion. But in spite of that it was the most elaborately prepared of all the multitude of Clarke's forensic speeches. The reason for this was that the great virtue of the speech lay in its

arrangement, the object being to make the exordium and the peroration—that is, the beginning and the end—support the main body of the speech which had to be devoted to the facts of the case. His exordium was a glowing tribute to the thirty-seven years' service of his client, and a demonstration of the unlikelihood of his having been engaged in corrupt practice. "In the course of his honourable career he has been exposed to many temptations; he has for a number of years been engaged in cases connected with turf frauds, and has been in constant communication with men who by means of those frauds have accumulated large sums of money, but of whom he was a vigilant and persistent foe. Can it be doubted that the swindlers of whom he was the enemy would have filled his hands with gold if he would only consent to aid them in diverting the pursuit of justice?"

He then went skilfully, though not in detail, through the facts guiding his argument with a light hand and trained skill through those which weighed most heavily against him, and so came on to his peroration. "It is a very grave and serious issue which you have to face. The convicts are men who for years have been growing in crime, and whose greatest turf fraud up to now has been the Walters and Murray scandal. I say up to now, because that with which you are more especially dealing is the great Turf scandal, the great coup with which the swindlers hope to crown their career of crime. It is their last hope to remove from their path the intellect, the honesty, and the experience of the man who has for years been foiling them. And I ask you, now that they have attempted to palm this fraud on you, to deal with it as my client, year after year, has dealt with frauds which have threatened the interests of the public; in the same way, as he has firmly and energetically tracked them and their crimes to their source and has succeeded in diverting their schemes and punishing them, I ask you to track this fraud, to expose it and to punish it, by driving the conspirators back to the punishment which they hoped to escape, but which they so well deserve."

Edward Clarke's speech won a considerable compliment from the Attorney-General in that the greater part of his final speech on behalf of the Prosecution was devoted to the case against Inspector Clarke. This time there was, as had not been the case in the Penge trial, a model summing-up, "clear, complete, not over-elaborate and quite impartial." The jury were out for fifty minutes, and then returned a verdict of "guilty" against all the other prisoners, but "not guilty" against Clarke. The verdict of "not guilty" was greeted with applause in some parts of the Court, and dissent in the others, a fair reflection of the way in which public opinion was divided as to Inspector Clarke. It is interesting to observe that the law then existing, which forbade the prisoner to give evidence in his own behalf, of which Edward Clarke had so frequently complained, on this occasion operated to his benefit. In his view it would have been practically impossible to have obtained an acquittal in this case, if he had been able to call his client as a witness. "The change in the law which has very properly been made has seriously reduced the opportunities of the advocate. A brilliant speech before the prisoner is called is dangerous; when the prisoner has been called it is often impossible."

After the verdict Inspector Clarke, who was close on sixty, was retired from Scotland Yard on a substantial pension. He gave a personal reiteration of his innocence in a letter written to Edward Clarke from the Detective Department of Scotland Yard:—

"Sir,

I have much pleasure in informing you that all accusations against me have been withdrawn and I am now fully reinstated in my former position. I beg to thank you very much for the very able manner in which you conducted my defence. The Solicitor to the Treasury has been most grossly deceived by the woman, Mrs. Avis, as I most solemnly declare I never received a letter in her handwriting, the drafts of which she produced. I am informed by her own family that she was entirely a creature of the convict

Benson, and would perjure herself to any extent to serve him. As to the evidence of the convicts, Kurr and Benson, I can only give it my solemn denial that ever I received even one penny at their hands, or ever gave them the slightest information.

Again thanking you most heartily,

I am, Sir,

Yours most obediently,

G. CLARKE."

While Inspector Clarke was thus honourably retired, the other detectives joined Kurr and Benson in prison. Their sentences were, of course, much shorter being only for two years each, and all of them except Druscovich, who fretted himself to death in prison, emerged from the ordeal. Benson and Kurr, who were both young men, also survived their long sentences, only to revert to a life of crime. Inspector Clarke opened a public house on his retirement, and it is satisfactory to be able to record that Palmer, who had only written one letter of warning and received no bribe and who was convicted more on account of his loyalty to his colleagues than for his personal misdemeanour, was also able to open a public house in Surrey. That he was granted a licence by the Surrey Magistrates was due largely to the intervention on his behalf of Edward Clarke.

The most important public result of the trial was the revelation it afforded of the unsatisfactory condition of the system of criminal investigation then existing, and the consequent creation six months later of the Criminal Investigation Department of Scotland Yard. Its personal importance in the life of Edward Clarke is the illustration which it, like the Staunton case, provided of his powers and method of advocacy. The two cases, fought within so short a time and against such odds, and conducted as they were in the full light of public attention, set the seal on his claim to be regarded as one of the first advocates of the century.

CHAPTER VII

BITTER-SWEET

TOWARDS the close of the decade the steady upward movement of Clarke's progress quickened into a more exciting tempo. The Penge Case and the Detectives' Case had opportunely provided him at the right moment with exactly what his career then demanded. If Louis Staunton had not mentioned Cudham in the shop at Penge, and if Inspector Clarke had remained in the witness-box instead of being placed in the dock, the forensic career of Edward Clarke would not have progressed with such rapidity.

The direct commercial rewards of both the cases were unsubstantial. In the Staunton Case he received a refresher of only ten guineas a day, and his total fees for the case amounted to less than £100, while the Detectives' Case kept him anchored in Baron Pollock's court at the Old Bailey for twenty days at five guineas a day. But the indirect results of the double triumph were tremendous. His fee book bears testimony to the inrush of new clients following on these cases and of the substantial nature of the work which they brought to him. The Penge Case and the Detectives' Case took place in the autumn of 1877. In that year he made £3,211 at the Bar. In the following year, assisted by the impetus given him by these two cases he was able to make £5,172, which advanced in 1879 to £5,475.

It was not only the increasing financial rewards that bespoke the position which he had gained at the Bar. He began to be one of the inevitable selections as counsel when a really heavy case came along. Thus one of his last cases as a Junior was that in which various of the directors and the manager of the West of England and South Wales Bank

were put on their trial on a charge of making false statements in the Bank's balance-sheet and conspiring to misrepresent its state of affairs. Once again the two Law Officers of the Crown led for the Prosecution, and Clarke was Junior Counsel to Sir Henry James, Q.C., on behalf of one of the directors. There were so many counsel engaged in the case that there was not room for all of them on counsels' benches at the Old Bailey, and consequently the trial was moved to the Guildhall. After a lengthy hearing the jury only required fifteen minutes to find all the defendants "not guilty."

In June of 1879 Clarke applied for the Recordship of Brighton. This did not, of course, mean that he was contemplating giving up active practice at the Bar, as provincial recordships, unlike the Recordship of London, only take up a proportion—and in most cases a small proportion—of the time of the man holding the office. The positions carry a small salary, but naturally to one earning the income that Clarke then was, this was a secondary consideration: his desire for the position was due rather to the interest of the work and the honour which the office bestowed. In spite of the goodwill of the Attorney-General his application was unsuccessful, as the Recordship was already, in fact, at the time of his application, promised to another. But this was a trifling setback to one whom fortune had treated so kindly, and though, peculiarly enough, he never in the course of his long career became a Recorder, the disappointment over Brighton was wiped out almost at once by a much more important testimony to the high repute in which he was held. On June 14th in the same year Sir John Holker offered him the much coveted position of Junior Counsel to the Treasury—popularly known in the legal profession as Attorney's Devil. The title may seem irreverent to lay ears, but the duties are responsible and the rewards considerable. Bowen, who had just vacated the office in order to become a Judge, and incidentally a noted judicial wit, had made about £11,000 a year out of the office. The Junior Counsel to the Treasury was then, and still remains, the only Junior Counsel at the

Bar likely to make a five-figure income. A further attraction in the tenure of the position lies in the fact that it is ordinarily a prelude to judicial office. To any man such an offer would be a temptation ; but to Clarke less than most. His heart was still set on his boyhood ambition of the House of Commons and a political career. Circumstances and his eminent position at the Bar seemed now to be opening this up to him. The career proposed to him of Junior Counsel to the Treasury followed by the Judicial Bench would have been purely legal, and have eliminated all possibility of political distinction. He therefore had no hesitation in refusing the offer, and had the satisfaction of hearing the Attorney-General, when he was convinced that he really would not take it, tell him that in his view the refusal was right. He paid Clarke the further compliment of asking him his advice as to the proper incumbent for the position ; in reply Clarke suggested A. L. Smith, who was duly appointed and ultimately became Master of the Rolls.

Though Edward Clarke himself had had no doubt as to the wisdom of his refusal, and his view had been endorsed by the Attorney-General, it was not shared by Peacock, his clerk. A barrister's clerk is a person of great importance in the profession. Not only has he a great influence in making a successful barrister's career, but his own prosperity is most intimately linked up with that of the barrister for whom he works. Edward Clarke and Peacock had advanced together to the satisfactory position which existed in the summer of 1879 ; but the Bar is a perilous and uncertain profession. The position offered to Clarke at this stage spelt not only affluence but security, and it was natural that Peacock should be anxious for acceptance of a position combining two such desirable qualities. He could not but show his disappointment when informed of Clarke's refusal. " Why, sir," he asked, " whatever do you want ? " " I should like, Peacock," was Clarke's reply, " to have ten years in the House of Commons and be Solicitor-General." As is usual on these occasions, in giving voice to his ambition Clarke no doubt erred on the side of under-statement. In fact, though he did not know it, he stated the limit of his

achievement in the sphere of office only too clearly and accurately. He could not know that within only a little more than the ten years which he specified, he would have finished a six-years' tenure of the office of Solicitor-General, still less could he have guessed that he would by then have exhausted his experience of office and that within a few more years the House of Commons would know him no longer.

A General Election was expected in 1880, and this he hoped would provide him with the opportunity of contesting the seat of Southwark. But apart from the question of a political career, the pressure of his junior work and the physical strain which it involved had inevitably turned his mind to the desirability of applying for Silk. In his case it was likely that such an application would be successful, which meant that in a short time, granted a favourable verdict from the electorate, he would become Edward Clarke, Q.C., M.P. It was natural that the approaching realisation of part of an ambition so long and consistently held, and so honourably and so hardly striven for, should fill him with pleasure. But not the least of this pleasure was that the family to whom he was so devoted would share his growing prosperity and his increasing distinction with him. It was not to be. In that same June, when his fortune seemed so high, the health of his mother, for whom, in spite of her somewhat narrow nature, he had always had great affection and gratitude for her determination that he should be something more than a shopkeeper, broke down completely, and left her to pass three more hopeless and helpless years. In her case, however, he at least had the consolation that she was old and had lived her life. But in a few months Death had struck at his daughter Mabel, whose happy childhood had seemed to be but the prelude of a long and happy life. To her Clarke was devoted, and all the time which he could snatch from the heavy obligations of his work was devoted to her and to Ethel and Percival. By a strange irony she died of that tubercular meningitis which only two years before he had been studying in order to save the life of a stranger. Among his papers was the

last letter which he wrote to her, when she was holidaying in Dieppe in the September before she died.

“ My dear Little Mabel,

I have been scolding myself for not having written to you all the time you have been away, and am glad to find by Mrs. Pinches' letter which we have just received that I have a chance of letting you hear from me before you leave Dieppe.

We have been so glad to hear that you have been enjoying yourself, and that you have been a very good girl. I am sure you will have a great deal to tell us all when we see you, what with the dancing and the concert and the fire-works you must have been quite gay, and I am quite disappointed not to have been able to come over and have some romps on the sands with you and Rhoda and Ethel and Teddy and my little godson. (Give my love to all of them.) But I dare say Mr. Pinches has told you that I have been very busy going backwards and forwards between here and Bristol, and I have been so little at Sheet that they were not at all inclined to let me off even for a few days to come over to Dieppe. Your dear Mama seems, I am very glad to say, a good deal better ; she sleeps pretty well and does not cough nearly as much as she did. We are coming back to London on Tuesday and I think she will want you to talk to her all day on Wednesday, for on Thursday morning I am going off with her again. We have not settled where we shall go, but I think it will very likely be to North Devon, for it is getting late for Yorkshire and there are pretty places in Devon which I have long wished to show her. As you will get to London so late on Saturday Mrs. Pinches has offered to take you up to Ladbroke Square, so please tell her that if she does not mind keeping you until Monday we will send up on that morning for you. I do not know how we shall thank her enough for giving you such a splendid treat. Give our very kindest regards to her and Mr. Pinches and our love to all your little companions. And we send to you, dear, our fondest love and kisses and

hope to see you looking very well and very happy when we get home on Tuesday.

Your loving father,

EDWARD CLARKE.

Percival and Ethel send lots of love and kisses."

But fate had one more blow for him, the cruellest of all. The reference to his wife's coughing in the letter referred to an attack which had recently come upon her. In great alarm, he hurried her to Sir Andrew Clark, the great specialist. His letter, clear almost to the point of terseness, was practically a sentence of death.

" My dear Sir,

Mrs. Clarke's fears are well-founded. She has considerable disease of the right, and some of the left lung. The malady is of a tubercular character and of that variety of it which, usually, is slow in its progress.

There are some hopeful points in Mrs. Clarke's case ; and one need not despair of having the malady arrested : cured it cannot be.

I spoke as cheerfully as I could to Mrs. Clarke, and by her reticence was not required to say that her lungs were affected.

Faithfully yours,

ANDREW CLARK."

The blow almost overwhelmed him in its finality. To a man of his devoted and at the same time active temperament, the thought that he could do nothing in the cause which he would have given up everything to assist, was especially galling. He took her down to Devonshire that autumn, and on his return left her with friends at Petersfield, where he joined her as often as his work would allow. In the New Year he took rooms for her at Hastings to provide for her the benefit of the sea air, and thither he repaired each week-end to be with her.

It became all the more desirable that he should take Silk and thus lessen the burden of work imposed on him. He had already, in the spring of 1879, sent in his application to the Lord Chancellor, with a statement of his qualifications, as is the custom.

“ My Lord,

I have the honour to apply to your lordship to advise Her Majesty to appoint me to be one of her Counsel in the Law.

I was called to the Bar at Lincoln's Inn in Michaelmas Term, 1864, being one of the Tancred Students in Common Law, and I have since then made constant, and of late years rapid, advance in professional work. In the year 1866 I published a treatise on the Law of Extradition of which a second edition was required in 1874, and which has been accepted in France and the United States as well as in this country as the textbook of the Law upon that subject. A great opportunity was given me last year when I appeared as one of the Counsel for the defence in the Penge Case and the Detectives' Case, and the immediate result was a very large increase in my professional income, which I have reason to think is now exceeded by very few juniors at the Common Law Bar.

I have only twice had the honour of appearing before Your Lordship, but I have reason to believe that I enjoy the good opinion of the Judges before whom I have habitually practised, and should Your Lordship think fit to obtain for me the rank I now seek, I trust I shall approve myself worthy of your recommendation and of Her Majesty's favour.

I have the honour to be, etc.”

The application contains a curious mistake. It is dated March 31st, 1879, and refers to, “ the opportunity given me last year . . . in the Penge Case and the Detectives' Case.” Both these cases had of course taken place in 1877, and therefore the letter should have referred to “ two years ago.”

It appears to have taken them a long time to appoint Silk in those days, for though Edward Clarke was not

apparently passed over, the year 1880 opened without his having been appointed. It was a time when he was necessarily much depressed with the domestic misfortunes which had befallen him, and was contemplating retiring from Southwark, where he was now the Conservative candidate in prospect for the coming General Election. Events, however, moved too quickly to allow of any such intention taking definite shape. On January 20th he wrote from St. Stephen's Club to his wife at Hastings: "I have been dining here this evening and working away at my speech for next Monday, and now before I go home I will have a little chat with my pet. I have really something to tell you. Do not be disappointed; it is not that the Silk has come; I have heard nothing about that. But I hear this afternoon Mr. Locke was taken home from the Temple very ill. He is an old man, and quite possibly a few days may see a vacancy for Southwark. In one way it will be a serious matter for me. To have to fight Southwark twice in a few months would be a very costly thing. However, I must fight if the chance comes, and trust to success to make it up to me."

Locke was a Liberal, who divided the representation of Southwark at that time with Colonel Beresford. He did die, and Clarke went forward to the by-election. The difficulty of his position can be realised from the fact that Southwark was normally a Liberal constituency; that after over five years of Office the popularity of Disraeli's Conservative Government was decidedly on the wane; and that the Liberals had since the previous election in 1874 introduced a machinery modelled on that of the Birmingham Caucus. As against this, Clarke had worked hard in the constituency for a number of years, and had some years previously expended considerable time and money on producing the *Southwark Mercury*, a local paper designed skilfully to mingle topics of local interest with propaganda for the Conservative side. The election in a London constituency of 250,000 inhabitants, and what was then the large number of 22,000 voters, was viewed by both parties as of great importance as a pointer to the prospects

of the General Election which could not be long delayed. It was therefore not without justification that Clarke wrote at the end of January: "By that time I may be M.P.; if not, I shall have fought a contest that will not be forgotten."

An unexpected element in the contest, which was of advantage to Clarke, was the intervention of a Labour candidate, whose chances were slight, but whose votes would be taken from the Liberal candidate, a Mr. Andrew Dunn, a typical Liberal candidate of the times, iron merchant and prominent Nonconformist. Clarke's election address was not of a sort to be of much assistance to him. Read to-day it is indeed a curious document. The dominant idea seems to be that of comprehension, which has triumphed to the virtual exclusion of arrangement and a complete elimination of attractive presentation. It is upwards of two thousand words in length, and goes into a good deal of detail on matters which never have and never will sway an electorate.

One paragraph is here reproduced:—

"In the field of practical legislation there is plenty of work for Parliament to do. The codification of the Criminal Law; the establishment of a reasonable and uniform system of valuation for rating purposes; the amendment of the law of bankruptcy; the simplification of the title to land; the removal of the rule which prevents a person charged with crime from giving evidence on his own behalf, and will not permit his wife to be called as a witness; the abolition of the rule by which the eldest son in the case of an intestacy takes the whole of the landed property—these are among the matters upon which I hope I might usefully assist in the work of legislation."

Such a programme, put forward to an urban electorate seems, to put it mildly, somewhat remote in its appeal.

But whatever the short-comings of the printed word, Clarke was a magnificent performer when it came to the spoken word. He devoted himself with great energy to speaking and canvassing, and succeeded in kindling great

enthusiasm. Towards the end of the contest he began to anticipate victory, and a day of such sustained excitement, as only polling day in a closely contested election can supply, raised his confidence still higher. It was not misplaced ; though the election was closely contested, his poll exceeded that of his two opponents combined.

Clarke	..	..	..	7,683
Dunn	..	..	..	6,830
Shipton	..	..	..	799

The election deprived Clarke of his voice, but gave him an instantaneous political reputation. To win such a by-election at such a time was a certain passport to the goodwill of the Party. It was a magnificent victory and as such was recognised in the cheers which greeted him when he went up the floor to take the Oath. His father, then nearly eighty, his faithful friend Edward Pinches and Percival were in the gallery for the great occasion, and before going over to dine with them at St. Stephen's he sat down to write an account of the great day to Annie at Hastings. His cup of triumph was filled to overflowing by meeting his former fellow-pupil Montagu Corry, by this time Lord Beaconsfield's private secretary, who told him that the Chief had been highly pleased with his Southwark speeches and especially with the phrase, "Englishmen are proud of the privileges of freedom and are not afraid of the responsibilities of Empire."

There followed a much-prized invitation to lunch with Beaconsfield, whereby Clarke was brought into contact for the first time with his life-long hero. Beaconsfield talked about politics and literature for an hour and a half, and said that the Southwark contest was "a brilliant campaign, brilliantly fought." The conversation had one important and untoward result, which brought misfortune to Clarke personally and to the Party. The Prime Minister was naturally anxious to know how far he could take the Southwark result as an index of public opinion, which would justify him in dissolving Parliament with the hope

of securing a majority at the General Election. Clarke urged him not to rely on the Southwark by-election as a criterion of the state of feeling in the country generally. Unfortunately his advice was not taken, as the Party managers considered it too good an opportunity to miss. The consequence was a dissolution in the spring and a General Election which was disastrous to the Conservative Party.

Meanwhile, Clarke had still not been given Silk, and was very much pressed by his legal work. He wrote to Annie on February 25th: "Briefs—big briefs—are fairly tumbling over each other, and if the Chancellor does not give me Silk soon I shall be obliged to promote myself and refuse Junior work. I dined at the Carlton last night—very quiet, wealthy and comfortable. The night before I was at the Fanmakers' Dinner at Cannon Street, a large gathering and a wonderful reception for me. To-morrow or Saturday, I am going to smoke a cigar with the editor and the artist of 'Vanity Fair' in which I shall appear shortly. The *Illustrated News* will have me on Saturday." The letter ends: "Give my love to Fanny and be content if you can with this scrap of a letter from your hurried husband."

The Lord Chancellor did not in fact give him Silk until the General Election was in progress. Three days before the announcement of the dissolution, however, Clarke had made his maiden speech. He had chosen the subject of Local Option in respect of which Sir Wilfrid Lawson, the well-known advocate of total abstinence, was introducing a measure. The knowledge that a maiden speech was going to be made by the victor of Southwark, who had established such a great reputation for eloquence in the Courts, would in any case have filled the House. But circumstances made it more of an opportunity, and a proportionately greater ordeal, in that John Bright, who was to have spoken later, decided to speak earlier, and Clarke had to follow him. To the Conservative Chief Whip's anxious enquiry as to whether he was prepared to follow Bright he replied in the affirmative. In spite of all his experience in the Courts and on the platform, and in spite of the fact that he had written out

his speech and learnt it by heart, Clarke was intensely nervous, and at the beginning of his speech he faltered and nearly broke down. He quickly recovered, however, and spoke without a note for forty minutes. The speech was a rhetorical triumph, and was accorded a great reception. In the words of Agg-Gardner, who had hurried down to the House from the Carlton when he heard that Clarke was to speak, it was "a maiden speech of such eloquence that, contrary to all the rules of order, the Strangers' Gallery burst into applause."

On his return home, he found his wife in tears. The triumph to which they had both looked forward had come too late for her. As he wrote in one of his letters to her : "There is a heavy drawback to the pleasure of all my great successes, as I cannot have with me to share the triumph the dear one who loved me and believed in me in the day of humble beginnings. But do not be too downhearted, dear. The winter is fast going by, and the milder spring will let you be out more, and perhaps may bring you back all the health and strength you had a year and a half ago." But they both knew, on that night of triumph and of sorrow, that it could not be so ; he knelt beside her bed and they cried together.

Meanwhile it was his duty to defend his seat at Southwark in the General Election. This time he met with misfortune. No sooner had he arranged with Edward Pinches for the printing of his election address than he was taken suddenly ill. He went at once to Sir William Jenner, who forbade him to proceed with the election in person, and ordered him to go down to Brighton to recuperate. The strain of work, worry and electoral activity had at last proved too much, and there was nothing for it except to obey Sir William Jenner's instructions. Meanwhile, he received the news of his Silk, and had to come up to London to be sworn in ; but this visit, as we gather from a letter to his wife, had to be kept secret.

"My dearest wife,

You will already have heard to-day by Fanny's letter

that I am getting on very well, looking and feeling much better and able to eat again without discomfort. I am steadily making up the long arrears of sleep, for I get twelve hours in bed every night, and sleep about eleven out of the twelve. Dr. Allen is quite satisfied, but he will not hear of my coming back to do anything in politics within the fortnight Sir William Jenner prescribed. So if I do attend any meetings in this election it will not be until the evening of Wednesday week.

But you will see me much sooner than that. It is important that if possible I should be sworn in on Wednesday afternoon, so we shall come up by the 11 train arriving at London Bridge at 12.27.

I shall want the brougham to meet me there ; will come home to lunch and dress, and then go straight to Westminster and back. The fact of my coming up will of course be kept secret, and I shall leave town again on Thursday morning (probably with Edward Pinches for the Isle of Wight) to stay until the following Tuesday or Wednesday. I want to see you and to hear all about what Sir William Jenner said to you.

It is capital news that your lungs are no worse considering what a terrible winter we have had. Thank Mrs. Bryant for her letter of congratulation upon the ' Q.C. ' I am very glad, for it puts my future beyond the caprice of a Chancellor and when I get strong and fit for work again I think in or out of Parliament the way looks pretty clear before me.

Ever fondly your own

EDWARD CLARKE."

Meanwhile, they had to carry on at Southwark without him. His Conservative colleague, Mark Cattley, was a genial man, but a very poor speaker. In any case the tide was running against the Conservatives all over the country, and even if Clarke had been able to participate it would have been a very difficult task for him to retain his seat. Being absent, he was vigorously and scurrilously attacked, especially by the Irish population of Southwark, with the result that both he and Cattley were decisively defeated,

and his six weeks' Parliamentary representation came untimely to an end.

He had been Edward Clarke, M.P., and he was now Edward Clarke, Q.C.; but he had not yet been Edward Clarke, Q.C., M.P. He had not long to wait. On returning to London from Brighton in April to take up his professional duties again, he found a satisfactory amount of leading work awaiting him. The taking of Silk by Junior Counsel is always a risk, as there are many instances of men with really distinguished careers as Junior Counsel entirely failing to make good as Silks. In Clarke's case the risk was present, as it always must be, but in far less degree than is generally the case. He had, as he had already proved, the qualities of eloquence and persuasiveness and that indefinable element of personality, which are the indispensable adjuncts to a career in the first flight of Leading Counsel. He also had the great advantage that his cases in the last few years and his striking victory in the Southwark by-election had made his name very widely known indeed. He, therefore, was busy from the start, and any doubts he may have felt were very soon set at rest. This is seen from a letter he wrote to his wife on April 8th in which he dwells upon other matters of consolation for his defeat.

"I did not get your letter until I arrived home at half-past ten last night, having come straight from my first consultation in Silk. It is rather amusing to have looked forward to Silk as being light and easy work, and then to have a four hours' consultation on the first evening. And to-day I have won my first case as Q.C., and have three cases going on at the same time. I dare say I shall not have any time to fret even if I felt inclined to. But I am not at all unhappy. I had a wonderfully kind and complimentary letter yesterday from W. H. Smith; I heard that the Duke of Richmond had expressed great interest in my fortunes; it is possible that I may be freed from the expenses of the last election; and a number of working men are going to give me a testimonial. All this is enough to cheer me up, and I hope it will cheer you too."

He was, in fact, relieved of the greater part of the expenses of the election, having to pay on his own account only £1,500 for the two elections, which in those days of enormous and unrestricted electoral expenditure was not a very big proportion of the whole in a large constituency like Southwark. But there was better and more positive consolation in the briefs to appear at Election Petitions, which poured into his Chambers. It has already been observed what a pleasant rôle in the life of a political lawyer Election Petitions played in those days. The election of 1880 had been notoriously corrupt, and as Clarke had now a considerable political standing in addition to his legal reputation, a large proportion of the petitions on the Conservative side came his way. There were, in fact, no fewer than twelve, including one on behalf of his friend Agg-Gardner at Cheltenham, where he had held his first brief in an Election Petition twelve years before. For the hearing of this Petition he stayed with Agg-Gardner, as did his Junior Counsel, and had a very pleasant time. The witnesses broke down, however, and they could not succeed in unseating the Liberal Member. But at Gravesend, to which he went on after Cheltenham, the Liberal Member was unseated after a trial lasting twelve days, the cost of which Clarke estimated at £20,000. At Canterbury, where his next case was tried, the Judges—Election Petitions were at this time tried by two Judges owing to the peculiar decisions of one of their number in the petitions following the 1874 Election—found that there had been such gross bribery on both sides that they put in a report the effect of which was to prevent Canterbury from having any members in that Parliament at all. At Wallingford he was again successful in unseating the Liberal Member, and so came on to his last two petitions, those of Macclesfield and Plymouth, which happened to be fixed for the same day. As he was first Counsel at Macclesfield and only second Counsel at Plymouth, he wrote to his Plymouth clients authorising them to dispose otherwise of his brief if they so desired. Had they availed themselves of this permission, it would have made a substantial difference in the life of

Edward Clarke. They retained him, however, and after unseating the Liberal Member at Macclesfield—where the Borough was disfranchised and both agents sent to prison for six months—he journeyed on to Plymouth. Here the Conservatives were on the defensive, as Sir Edward Bates, a wealthy local shipowner who had been the Conservative Member since 1874, was attacked on the grounds of bribery. The Liberals were themselves not conscious of any virtue, for though they were trying to unseat Bates they did not claim the seat for themselves. The effect of this was that the most they could hope for was a by-election. This they succeeded in getting on account of a breach of propriety on the part of one of the Conservative workers, which was trifling and technical in comparison with what had gone on in many other constituencies.

It was on June 25th that judgment was given against Sir Edward Bates, and Clarke travelled back to London. The following night he received a telegram from Plymouth asking him to be the candidate at the by-election necessitated by that judgment. He felt some qualms at deserting Southwark, but strict fidelity to his candidature there would mean that it was impossible for him to enter the House of Commons in the lifetime of the current Parliament. This being so, he left the decision to W. H. Smith, who advised him in the interests of the Party to accept. Clarke followed up his acceptance by his own personal appearance, and entered into a spirited by-election, in which he was successful in defeating Sir George Young, a Liberal barrister. His majority was only 124, but this figure was higher by nearly a hundred than Sir Edward Bates's Conservative majority at the General Election. Thus, in the course of a short five months he had been Member of Parliament for two constituencies, fought three elections, made a most successful maiden speech in the House, become a Q.C., and had helped as Counsel in Election Petitions to unseat five Liberal Members.

He now was at last Edward Clarke, Q.C., M.P., and both his political and forensic reputation pointed to a future to which there need be no apparent limit. It was a future,

whatever it was to be, which could not be shared by his wife. As the year 1880 went on, her illness grew worse. He took her in the autumn first to Worthing, and then to Devonshire, and ultimately after Christmas to the South Coast. But it was evident to them both that the end was near. On March 3rd, 1881, very peacefully there came the end to which she had been sentenced nearly two years before.

Even though the blow was expected, it was crushing. But he resolved that after his year of mourning he would not remain single. His own words may aptly be quoted: "For more than fourteen years I had enjoyed the constant society of a loving woman, and I could not resign myself to loneliness. And my two children were so young that it would be possible for another woman, especially if she were one whom they already knew and loved, to knit again the broken strands of home life and to give to their childhood and youth the comfort of a mother's care. Kathleen Bryant was their second cousin on their mother's side, and they knew her better and were more attached to her than to any other relative; for during their mother's long illness she had very often been with us, helping to take care of them. It was not until many years later that I heard that my dear one, not long before her death, had expressed the hope that in seeking a second wife my choice should fall upon her. She was at this time twenty-two years of age; tall, of perfect figure, fair complexion, beautiful features, clear blue eyes, and bright golden hair, she was the prettiest girl I knew. Gradually the intention to ask her to be my wife formed itself in my mind." In the beginning of August, 1881, after they had been together to a performance of *Romeo and Juliet* with Irving and Ellen Terry, he asked her to marry him. She hesitated, but in the end consented, and they were married quietly at the end of the following week. Shortly after their return to London, after a honeymoon on the Continent, they removed to 37, Russell Square, in which more convenient situation they resided for nearly twenty years.

It was not the easiest thing for a young girl to become the second wife of a man in established position, whom the

immediate future was bound to bring into political prominence. She was, for all her youthful beauty and charm, delicate in health, and this made her varied task no easier. She had to take the place of their mother in the lives of Ethel and Percival, and later she had her own son William ; she had to run her establishment, and to look after her husband, whose intensive and varied activities inevitably placed upon him a burden greater than the ordinary human constitution is intended to carry ; and not least she had to take her place in the spacious social and political life, where she and her husband now had a part to play, a task which would be exacting to any inexperienced girl and impossible to many. But Kathleen Clarke had qualities beyond those of youth and personal attraction. She had great reserves of quiet character, kindliness, and real goodness. In the result their home life was always superlatively happy, and in public life she played her part admirably. As a young girl, mingling almost exclusively with those older and more experienced than herself, she was then as successful as she is as an old lady at the time of writing, when in the nature of things she mixes most with those who are much younger.

CHAPTER VIII

MURDER AND MYSTERY

THE Election Petitions, which had had such a welcome effect on Clarke's fortunes in the crowded year of 1880, contributed £3,000 to his fee book—rather over half of what he earned in that year. It was therefore due largely to these that his earnings for his first year as a Silk, instead of declining in the ordinary way from the level of the earnings of his last year as a Junior, showed an increase of over £400. But there were not Election Petitions every year, and the fact that his legal earnings for 1881 were over £6,000 is evidence of the extraordinary rapidity with which he acquired a big leading practice. In the fifteen years in which he practised at the Junior Bar he earned a total sum of £25,341 : it required only four years' practice as a Q.C. for his earnings to exceed this figure.

The spring of 1882 found him engaged in the most exciting trial which had fallen to his lot since the two great cases of the autumn of 1877. This was the case of Esther Pay, whom he defended at Lewes on the charge of murdering a child called Georgina Moore. The case, which profoundly exercised public feeling at the time, is not only one of great dramatic interest, but is also illustrative of Clarke's tactical skill when faced with a difficult case.

Esther Pay was the wife of a wheelwright, living in humble circumstances on the second floor of a house in Pimlico. She was thirty years old, and an extremely good-looking woman. Her attractions succeeded in the not very difficult task of gaining the wandering attention of one Stephen Moore, who lived in the same house as the Pays. Stephen Moore was himself a married man with a daughter called Georgina, but neither of these circumstances prevented him carrying on an adulterous intrigue with Esther Pay. This had been going on for some years when Pay became

suspicious, with the result that the Moores left to take up their residence elsewhere. They did not, however, go very far afield, finding premises in a neighbouring street in Pimlico. This was very convenient since, as Pay left for work very early in the morning, it enabled Moore to call round and spend an hour or two with Esther before going to work. By the middle of 1881, however, Pay, who in spite of his hours of work, was not a *mari complaisant*, found out what was going on, and promptly beat his wife in the good old-fashioned way. In spite of the views of modern psychologists and the like, this effective treatment put an end to the relationship between Moore and Esther Pay. This did not mean, however, that Moore mended his ways or became a model husband. What he did do was to transfer his affections to a married woman, living near Regent's Park, at whose house he slept every night, merely calling on his wife for an hour or two before going to work. Esther Pay, for her part, did not altogether sever her connection with the Moore family, but continued in the more creditable rôle of friend of little Georgina, of whom having no child of her own, she was very fond, and whom she often took for walks.

On December 20th, 1881, Georgina, having had her dinner at home, left to go to school at about 1.30. Her mother saw her off, but never saw her alive again. It was not until six weeks later that a bargeman, working his barge with a pole on the river at Yalding in Kent, struck something with his pole. On investigation, it turned out to be the body of a small girl lying on the bed of the river about eight feet from the bank. To prevent the body, which bore obvious marks of strangulation, from floating, a brick weighing five or six pounds was attached to it, being tied with strong wire which twice passed round the body. The river had been in heavy flood in December, and the hat was found about three hundred yards downstream. The body was identified as that of Georgina Moore, and a post-mortem taken, which established that she had taken a meal two or three hours before her death.

Suspicion fell almost at once on Esther Pay. She

frequently took the child for walks ; she did not seem to have any very satisfactory account of her movements on that afternoon ; and her parents lived at Yalding, where the body was found. Enquiries were instituted, and revealed that many people had seen a woman and girl, answering roughly to the descriptions of Esther Pay and Georgina, making their way at various stages on the road between London and Yalding. Identification parades were held, and though identification of Esther Pay was not unanimous on the part of all, a satisfactory proportion did, in fact, identify her. She was charged with murder, and Clarke was briefed to lead Safford for the defence, while Poland, who had been Junior Counsel for the Prosecution in the Staunton case, led Robert Biron for the Prosecution.

Though public interest was great, Esther Pay was not condemned by popular opinion with the same unanimity as were the Stauntons. But the case was black enough against her. In addition to the circumstances which had first pointed suspicion in her direction, it was found that she had given a false account of her movements on the fatal day. When the case came up for trial, the Prosecution called more than forty witnesses in order to link up the journey of Esther Pay and Georgina from London to Yalding and to fasten the responsibility of the crime firmly upon Esther Pay. This was the main body of evidence. Unlike the Staunton Case, the medical evidence in this case was unimportant, except in so far as the post-mortem had established that a meal had been taken within two or three hours before death. There was also evidence as to the flooded state of the river which had brought it a foot deep over the towing path. Both the parents of the child gave evidence, Mrs. Moore in relation to Georgina's timidity, and Stephen Moore, who seems to have been a man of one idea, to the effect that he had committed adultery with five women. With all of these he was still on friendly terms, and he had no quarrel with Esther Pay.

The case, of course, stood or fell by the measure of success in linking up Esther Pay incontrovertibly with the journey to Yalding. The evidence in support of this, taken in mass

was formidable. There was the boy of seven, who went to the same school as Georgina and who saw her talking to a woman in a light cloak after dinner on December 20th. There was the policeman who had seen a woman wearing a long light ulster going down Sutherland Street with a child at 2.15 on that day ; and there was the cabman at Paddock Wood, who had been asked by a woman on December 20th, what was the amount of the fare to Yalding. She had had with her a child—either boy or girl, he was not sure. Then there was Charles Cronk, the ostler at the Kent Arms on the road between Paddock Wood and Yalding. He had been at school with Esther Pay, and on seeing her passing by with a little girl in the Yalding direction, had called out, "Hallo, Esther," but had received no answer. There were two farm labourers who had seen a woman in a light ulster, with a black veil over her face, walking along the road near the Elm Tree public house, about a mile on the Yalding side of the Kent Arms. The Yalding road was well supplied with places of refreshment, for another mile farther on from the Elm Tree was the Queen's Head, where Mrs. Pont, the landlord's wife, had served a woman in light clothing with a half a quartern of gin on December 20th. December 20th was the Tuesday before Christmas, and she remembered the date because Tuesday was wash-day. There had been no child with her when she ordered the gin, but a labourer called Barton, who had seen her come into the Queen's Head, looked out of the window and saw her going along the road afterwards with a child ; similar evidence to this was given by two other men. There was yet another inn on the way to Yalding, called the New Inn, this time only three-quarters of a mile from the Queen's Head. Thomas Judd, the landlord, said that at about 6.30 on December 20th, a woman with a child came in and bought two biscuits, one of which she gave to the child, and threepennyworth of whisky which she drank herself. She then proceeded in the Yalding direction at about seven. The chain was completed by a labourer called George Bradley, who had heard a scream, he thought, coming from the direction of the river bank on the evening

of December 20th. This evidence was not quite so formidable as it seemed, however, because Charles Cronk, Thomas Judd of the New Inn, and the two farm labourers who had seen a woman near the Elm Tree public house, all failed to identify Esther Pay. Clarke was also able to make a certain amount of play in cross-examination with the various witnesses' recollection of details. But the strength of the case against her can be seen from the fact that Stephen Barton, who had seen her at the Queen's Head, identified her out of fourteen, while both the policeman and the boy of seven identified her cloak at the Police Station.

The Prosecution, however, were not content with forging the chain which connected Esther Pay with Yalding on that evening. They also called evidence with the object of proving that Esther Pay was seen at Yalding Railway Station the following morning in company with her mother, with whom the suggestion was that she had stayed the night. This evidence was supplied by a Mrs. Kemp and a Mrs. Ashby, who said that on the morning of December 21st or 22nd they went to Yalding Station and while waiting on the platform saw Mrs. Humphreys, who was Esther Pay's mother, and another woman. They did not at the time know the other woman, who said that she had been married twelve years but had no children (as was the case with Esther Pay), but subsequently identified her as Esther Pay. In cross-examination they had to admit some uncertainty as to the date, and Clarke strongly urged that they were confusing the occasion with the previous August Bank Holiday. Mrs. Kemp admitted that she had been on the platform on that day but said that she was sure that it was not then that she saw Mrs. Humphreys and Esther.

The concluding evidence for the Prosecution related to the home affairs of Esther Pay at that time. Eliza Clark, who lived in the same house, said that she had seen her at about 12.30 on the morning of December 20th; she had then had on a light ulster and had said that she was going to the Aquarium with Mrs. Harris. In the evening the Pay's rooms had been closed, and she did not see Esther

again until 1.20 p.m. on the following day when she came in and said: "Mrs. Moore has lost Georgina; I am so sorry. I did not get back till 10 p.m., and both Mrs. Rutter (Pay's sister) and I got very wet. I was with Mrs. Harris in the afternoon at the Aquarium, and in the evening I went with Mrs. Rutter." The Prosecution called Mrs. Harris and Mrs. Rutter to prove the falsity of this story, Mrs. Harris saying that she had not been out with Esther Pay during the week before Christmas and had not been to the Aquarium for years, while Mrs. Rutter said that she had not seen her in the week before Christmas. When cross-examined by Clarke, she admitted that she had said at the inquest that she had been out with Esther on the evening of December 20th, but insisted that it was untrue and had been said at Esther's request.

The cumulative effect of such a vast body of evidence was necessarily impressive, and Clarke felt that he was on a losing case. His impression was strengthened by Esther Pay's own demeanour in the dock, where she heard the evidence in perfect calm and with an occasional smile. This was not at all the demeanour expected of an innocent young woman charged with murder in the 1880's, and Clarke had to send word to her that her attitude was making his task harder. For the Defence, since Esther Pay herself could not, of course, be called, Clarke had only five witnesses, and these really only spoke in disproof of part of the Prosecution's story. He was very fortunate in his first two witnesses, who were Esther's parents. Both were very respectable people, and her father had been over fifty years in service. He said that Esther had been at Yalding on August Bank Holiday, and since that they had not seen her till a fortnight after the discovery of the body. As for the period in question, his wife had not been out during the last fortnight in December as she had neuralgia in the face. It was not only the facts he gave, but the way in which he gave them, which helped the Defence. He described the scene when the Inspector came to arrest his daughter: "I said to Esther, 'Are you guilty or innocent?' She threw her arms around my neck and said, 'I am

innocent'; and I said, 'Then you can stand up and face God or Devil.' " The firm way in which the old man said these words produced a great effect upon the jury. The good impression was maintained by the mother, who gave evidence to similar effect, saying that she had seen Mrs. Ashby and Mrs. Kemp at Yalding Station on August Bank Holiday, and never at any other time. Esther had come home on December 28th: "I never saw her between Bank Holiday and then, and on that I will take my dying oath of before God and the Lord Jesus Christ." Similar evidence was given by Esther's brother and his wife, while her sister said that Esther and their mother had visited her at Maidstone on August Bank Holiday, which meant that they would have been on Yalding Station on that morning.

It will be observed that, whether or not the jury accepted this evidence, it only went to disprove the fact that Esther and her mother were on Yalding Station on the morning of December 21st; the story of the rest of the witnesses with regard to the journey down to Yalding on the previous evening might still be true even though they had not been on the Station. As to this vital part of the evidence dealing with the previous evening, it was in the nature of things impossible to call contradictory evidence. But the jury did accept the evidence of Esther's relatives with regard to the story of the railway station. This meant that they disbelieved Mrs. Kemp and Mrs. Ashby, and the Prosecution's case would have been much stronger if those two had not been called. A jury, realising that the disproof of part of a witness's evidence makes the rest of his evidence of little value, often does not realise that disproof of one incident does not affect the value of the others. There is a tendency, perhaps natural, to think that a case stands or falls as a whole, and therefore this partial success was of great value to the Defence.

No verbatim account remains of the speech Clarke made in defence of Esther Pay. It was a theme which needed careful handling, and he prepared it, as was his wont, with great care. He opened with a long and detailed criticism of the various identifications, and then went on to the

I feel that it is impossible for me to express my unbounded gratitude and as long as I live I shall feel your great kindness and true gentleness of mind in speaking so kindly of my poor father and mother. My earnest wish was that I could have thanked you in Court. I endeavoured to do so but was prevented by being hurried downstairs.

I remain, Sir,
Yours very thankfully and respectfully,
ESTHER PAY."

It is a nice letter, though one cannot help wondering from the phraseology whether, though the hand was the hand of Esther, the voice was not that of her butler father. In any case, Esther Pay was a strange young woman. Some years later, Robert Biron told Clarke how, when he was in a murder case at Kingston, a woman came up to him and asked him if he remembered her. When he answered

The Mark



This clever little Animal is a terror to fight. He covers himself up in silk and horsehair every day and then he runs along passages and pops into all sorts of different cases one after another and draws a nice little screw out of them too. There isn't no need to be hanged while you can get him. (I think this is nicer drawn than most of my pictures - I do hope he'll like it)

in the negative she said : " I'm Esther Pay ; I thought I would like to come and hear another murder trial."

It is not always murder trials, or even criminal trials, which have the strangest stories to tell, and Clarke appeared in the summer of 1882 in the sedate precincts of the Probate Court, in a case which unfolded a most peculiar history.

There lived at Leominster a mysterious old man called Henry Whalley. He was reputed to be wealthy, but whether this was the truth or merely the almost conventional reputation attached to solitary and shabby old eccentrics, it was difficult to say. He had no business, no occupation except fishing, and lived very poorly in two rooms in the house of a railway porter called Thomas, for which he paid nine shillings rent a week. He had only one intimate friend, a Mr. Gunnell, a prosperous wine merchant and an ex-mayor of Leominster. He had no known relations, and his only other callers were a Mr. Nash and a young man called Henry Priestman, a railway clerk at Hereford, who came over to see him at Leominster three or four times a year.

The truth was that Whalley, who before taking up his solitary residence at Leominster had been a rich iron merchant in Birmingham, had lived for some years with a woman called Priestman. They had had several children, and two of them survived her and lived with Whalley after her death. These two were Henry Priestman and his sister, who was some five years the elder. When she grew up, Whalley had some difference with her and sent her and her brother away from the house. For the young man he obtained employment on the Midland Railway, and the brother and sister lived on the sixty pounds a year salary which the boy received, reinforced by twenty pounds a year, which was all that Whalley sent them. Whalley never forgave his daughter, but saw Priestman from time to time and made enquiry after his conduct. The reports were good, and so, when his health began to decline in 1881, Whalley decided that the young man had made sufficient expiation for his sister's offence, and decided to put him in a position of affluence after his death.

There was not much time to be lost, for he had already undergone an operation for cancer on the throat, which made speech difficult ; his heart was affected also, so that he found difficulty in dealing with correspondence, and had often to get the porter Thomas to write his letters for him. Consequently, he sent for Priestman to visit him at Leominster, and told him for the first time of the relationship which existed between them. He told him also that he had made a will leaving £10,000 to each of his two brothers and the residue to Priestman, and gave him a book containing the list of his securities, which he asked him to add up. Priestman did so, and found that they totalled about £50,000. On the Good Friday of 1882 Priestman again went to see his father at Hereford. By this time Whalley had discovered that both his brothers were dead, and had in consequence made a new will, which he gave to Priestman to read. The will was in Whalley's own writing, and was very simple. Except for legacies of £100 each to Gunnell and Thomas, and £400 for the restoration of a Church at Leominster, the whole was left to Harry Priestman. The executors were Priestman himself, Gunnell and Thomas. Priestman left his father well content that his affairs were in order, and never saw or heard from him again.

Three weeks later, he received a telegram from Gunnell ; " Mr. Whalley died suddenly this morning. You need not come before Monday, as I will see to matters." He actually went over to Leominster on Sunday, and stayed with Gunnell until the funeral which had been fixed for the Tuesday. After the funeral Gunnell said to Priestman and Thomas, when they were all together in his house : " We will read the will now ; it does not interest anyone but ourselves and we had better be alone." He then produced an envelope on which was written in Mr. Whalley's handwriting, " This is to be opened only by E. Gunnell Esquire, Wine and Spirit Merchant, Leominster." He opened the envelope and produced a will written on a sheet of white paper, not in Whalley's handwriting but signed by him, witnessed and dated March 21st. It left £100 each to Gunnell and Nash, £5,000 to Priestman, and the residue to

Thomas. With the remark that it was astonishing, Priestman left the room. He took occasion, however, to tell Gunnell how disappointed he was; but Gunnell warned him not to say anything about it, as if the property were to go on intestacy the solicitor would advertise for a next-of-kin and, in the event of one turning up, Priestman, as an illegitimate son, would get nothing at all. So the will was taken to the solicitor, the securities were gone over and found to amount to £55,000, and on May 17th the will was duly lodged in the Registry at Hereford.

Nevertheless, action was taken, though not at the instance of Priestman. It was discovered that one of Whalley's deceased brothers had left a son, who, Priestman being illegitimate, was Whalley's next-of-kin. This young man caused a caveat to be entered against the will the effect of which, according to the practice of the Probate Court, was that those of the executors who desired to act under the will, came into the Probate Court as plaintiffs in an action to prove that the will was the properly executed will of the deceased Mr. Whalley. The defendants in the action were Priestman and the nephew who was contesting the will. Before the case came on, the will was frequently examined at the Hereford Registry, and nothing was found to call its validity into question. The operative parts, the signature and date, were undoubtedly in Whalley's handwriting, and though there appeared to be a slight compression in the last few lines this might well be due to the necessity of leaving space for the signature and attestations.

Edward Clarke and Sir Hardinge Giffard were retained for the executors, Gunnell and Nash. All that they had before them, of course, were the proofs of their own side, i.e., Gunnell, Thomas, Nash and Rees, a witness to the will. All of these were respectable men, and neither Giffard nor Clarke had any reason to doubt the truth of their assertions. There was one small point, which was rather curious: Nash, one of the executors, had with Rees witnessed the will, and consequently lost his legacy for £100. This was explained, however, by the fact that no solicitor had been consulted, and the men were ignorant of the law. Clarke

and Giffard had two consultations on the matter, and were in agreement that, though there seemed no reason to doubt the will, it was very ungenerous to Priestman and unreasonably lavish to the railway porter. At the same time Thomas intimated to them that he had not expected nearly so large a fortune, and would be content with a smaller sum. Following upon this, Clarke and Giffard had a discussion with Charles Russell, who represented Priestman and the nephew, whereby a compromise was agreed to. Priestman was to receive his £5,000, and the rest was to be divided in equal shares between him, Thomas and the nephew—the result therefore being that Priestman got £20,000 and Thomas and the nephew £15,000 each. This meant that the Court proceedings were almost formal. Nash gave evidence for the plaintiffs as to how at Whalley's request he had written out the will; Rees and he had then seen Whalley sign and date it and they had themselves witnessed it. He was not cross-examined and the Court gave judgment in favour of the will.

Priestman and his friends decided to celebrate in style at Leominster. They drove over from Hereford in a coach, and passing Thomas's door blew a horn and shouted in triumph. Thomas in answer waved at them a sheet of blue paper. It instantly occurred to Priestman and to a solicitor's clerk called Turner, who was on the coach with him, that this was the will which Whalley had shown to Priestman on the previous Good Friday. It seemed to Turner that here was an opportunity to show his mettle, and he was soon on very friendly terms with Rees and Nash; for he suspected that it would not be long before they quarrelled with Thomas. His expectation was well founded because, although Thomas had promised them £3,000 each when he had expected £50,000, now that he had only £15,000 he would only promise £500 each and that only verbally. Rees and Nash would not say anything definite about the will, but Turner continued to stir them up against Thomas and persuaded Rees that, as Thomas would not make a promise in writing, it would be as well to have a witness to the verbal promise. Consequently, Turner

concealed himself during a conversation between Thomas and Rees, and then emerged with the announcement that he had heard every word. This so infuriated Thomas that he promptly knocked him down. Turner took out a summons for assault and vowed revenge. He continued his enquiries still more assiduously, and, having won Rees over, induced Priestman and the nephew to bring an action in the King's Bench Division to set aside the compromise on the ground that it was obtained by fraud and misrepresentation. It was really the nephew's action, for it had been arranged that if an intestacy should be declared Priestman was to receive £22,000, which was only £2,000 more than he had under the compromise.

The trial began on November 16th, 1883, a period of two and a half years after the making of the will. Sir Charles Russell and R. E. Webster, whom we shall meet again in this narrative, appeared for Priestman and the nephew, who were the plaintiffs in the action, and Sir Hardinge Giffard and Edward Clarke for the defendants, Gunnell and Nash. As far as oral evidence went, the plaintiffs were not in a particularly strong position. Their star witness was, of course, Rees, who described in detail the manufacture of the will. According to his story, Thomas had produced a letter written by himself in pencil on a single sheet of white paper and signed and dated in ink by Whalley. The letter had been addressed to Priestman, but had never been sent to him. Nash had some sheets of paper of the same size, and on one of these he made the draft of a will which would occupy the same space as the pencil writing of the letter. Then the pencil writing was rubbed out, and in its place was substituted the will which had been drafted in ink and the attestation clause which Rees and Nash signed as witnesses. The story was detailed, and to some extent corroborated by the evidence of Turner, who related conversations which he had with Nash. It was not very difficult, however, for Giffard and Clarke to show the inherent unreliability of these witnesses. Rees was by his own account an accomplice in forgery, and his zeal could well be attributed to his disappointment at his share

of the spoils, while Turner was anxious for revenge against Thomas and also stood to gain by the success of the action. Against this the Defence were able to set the evidence not only of Thomas and Nash, who stuck to their guns under cross-examination, but of the respectable Mr. Gunnell, who had no apparent interest in the matter, and who spoke to the receiving of the sealed envelope addressed to him in Whalley's handwriting almost immediately after Whalley's death.

It looked, therefore, as if the Defence would succeed. But this case was not to be decided by oral evidence or by the skill of Counsel. Incontrovertible evidence came from an unexpected source, the will itself. When the will had been examined prior to the Probate Action about a year after it had been lodged in Hereford Registry, it had appeared to be perfectly in order. Eight months later when Thomas knocked Turner down, Turner decided to go and have another look at it. In point of fact, he went there several times to make a very close examination. He was well rewarded. At the first line of the will and at the last line and in one place in the margin there were marks which looked like the faintest possible traces of pencil writing and certainly had not been visible before. Twelve months passed before the hearing of the King's Bench Action, and by then the letters "D.H.P." appeared in capitals with such spaces between them as indicated that a letter had been written beginning "Dear Harry Priestman." Near the bottom also, could be seen the fragment of a sentence containing the word "know" in the handwriting of Thomas.

How it came about that writing which was formerly invisible had become visible was described by Mr. Richard Holmes, the librarian at Windsor Castle, who had been sixteen years in the Manuscript Department of the British Museum. He said: "The obliteration of pencil marks is rarely successful. When a pencil is used it makes an indentation in the paper and disturbs the filaments of the paper. These filaments are disturbed when the attempt is made to erase the pencil and cover up the particles of lead

which are most firmly attached to the paper. In time, particularly if the paper is subjected to pressure, the indentation seems to disappear, the filaments recover their original position, and so discover the lead."

Mr. Holmes also gave evidence to the effect that the envelope in which the will had been given to Gunnell had been steamed open and then re-closed. In face of this there was little hope for the Defence, and after a trial which had lasted fourteen days the jury found that the compromise had been induced by fraud and misrepresentation. This being so, the Probate Court set aside the will and declared an intestacy, under which Priestman and the nephew benefited in the agreed proportions. Naturally, in view of what had come out at the trial, this was not the end of the acquaintance of Thomas, Gunnell and Nash with the Law. In the following year, they were put on their trial at the Old Bailey for forgery ; but Clarke was not briefed in these proceedings. By this time the pencil writing was more clearly visible than before, and, in spite of the efforts of Giffard, Thomas and Nash were convicted and sentenced to fifteen years' penal servitude. Gunnell, however, was acquitted.

Also in 1883 was Clarke's defence of Gallagher, who was prosecuted in connection with the famous Dynamite Conspiracy. It was one of those efforts to introduce the political methods of persuasion adopted by minorities in some other countries into the smooth working of English life. When such efforts fail, as they generally do, the British public find some difficulty in regarding seriously the machinery of such attempts, which seem so out of place and so little in keeping with the ordinary rational life of this country. Nevertheless, it would be wrong to suppose that Providence has given this country any absolute immunity from such unwelcome attentions, and from time to time they come remarkably near success. Of such was Gallagher's conspiracy.

In the early 1880's feeling on the Irish question was running very high, not only amongst Irishmen in Ireland

itself and in England, but also amongst those in America. Gallagher was a leading light of a secret society in New York called the Emerald Club, which was a branch of the Fenian Brotherhood. Gallagher formed a project of going over to England and conducting a campaign of blowing up public buildings with nitro-glycerine in order to terrorise the public into taking a more amenable view of the Irish claims to independence. In order to carry this plan into effect, he required a depot for storing the necessary explosives, and a person to operate the actual blowing up. The first he obtained through a member of the Club called Whitehead, who took premises in Birmingham, ostensibly for the selling of paint and paper, but in reality for the storing of nitric acid, sulphuric acid, and glycerine, the components of the necessary nitro-glycerine. The person to do the blowing-up he thought was to hand in one Lynch, who had recently become a member of the Emerald Club. Lynch came over to England, albeit somewhat reluctantly, and he and Gallagher helped Whitehead to make arrangements for the transport of the nitro-glycerine to London. The recklessness of the conspirators can be seen from the fact that they brought up the nitro-glycerine, later assessed by experts to be of a quantity sufficient to blow up half London, by train in ordinary trunks. Their scheme might very well have succeeded but for the intelligent suspicions of Sergeant Price of the Birmingham Police, who, having attended chemistry lectures in his spare time, was aware that the materials being brought in such large quantities to Whitehead's shop were the component elements of nitro-glycerine. He therefore went to Whitehead's shop in the middle of the night, entered it with a skeleton key, and found the empty tins lying around. He promptly communicated with London, where the conspirators were arrested and placed on their trial.

The discovery of the explosives and the appearance of Lynch as a witness for the Prosecution left the Defence no chance on the facts. Clarke, therefore, took a technical point. The prisoners were charged with treason-felony which, under the Act of 1848, included levying war against

Bailey in the following May. Lord St. Leonards was charged with indecently assaulting a domestic servant called Emma Cole, who lived and worked at the house of a Mr. Samuel Crawford at Twickenham. The case for the Prosecution was that Lord St. Leonards saw Emma Cole for the first time on May 4th. Two days later she was alone in the house, when Lord St. Leonards called in an apparently intoxicated condition and asked if Mr. or Mrs. Crawford were in. On receiving a reply in the negative, he asked her to fetch him some string. No sooner had she started on her errand than he caught hold of her, tried to force her on the sofa and indecently assault her. She released herself; and the gardener came in, from whom Lord St. Leonards asked for the string. Lord St. Leonards then left, and it was not until the gardener returned a few minutes later that Emma Cole made any complaint. She was closely cross-examined by Clarke, both as to the reason for not having made a prompt complaint and as to her past history and antecedents.

There was no evidence to call for the Defence, and Clarke had to rely on his powers of rhetoric. Matthews for the Prosecution had argued that the best proof that Cole's statement was true was her willingness to submit to the ordeal of cross-examination. Clarke's answer to this was crushing: "Counsel for the Prosecution, in his impassioned speech, has spoken in terms of the deepest pathos with regard to the girl. His argument has been that it is corroboration of her story for a woman to confess herself unchaste. In the case of a pure-minded girl the argument would be that she would not go through the ordeal of making such a charge in public Courts if it were not true. The Prosecution has placed the defendant in a dilemma in which no one would be able to defend himself. There is no case more difficult to answer than a case of this kind, because there are only two people who know the facts—the accuser and the accused. A defendant is at the mercy of an accuser, and such charges are nearly always brought against people of position and means, who will be prepared to pay. I hope it will be the last time I shall appear in a case of this

kind until they have passed into Law the measure now before Parliament, which would allow a defendant to give evidence on his own behalf."

He then reviewed the evidence and urged the desirability of corroboration in cases brought on the complaint of women of doubtful character. The conclusion of his long and powerful speech drew applause from the Court, but could not win an acquittal for Lord St. Leonards, whom the jury after a long retirement, found "guilty." The measure with regard to a prisoner giving evidence on his own behalf did not become Law until late in the following year.

A few days later Clarke received a most interesting letter from the foreman of the jury, who was prompted to write by seeing the statement that efforts were being made to get a mitigation of punishment for Lord St. Leonards. "At the adjournment for lunch," he wrote, "you will doubtless remember both counsel had addressed the jury, and after your very powerful and eloquent appeal I was much surprised that I only out of the twelve was in favour of an acquittal on the grounds of the Prosecutrix's acknowledged bad character and of certain elements of doubt as to consent or otherwise on her part. I could not overlook the fact of her having made no sound in the struggle which could undoubtedly have been heard. I felt sure that the Recorder would point this out to us in his summing up, and trusted to this more than to my own persuasion to alter the impressions of the other eleven. The Recorder did address himself to us in the manner I anticipated and I made several notes which I thought would assist my opponent jurymen in coming to the same conclusion as I had. On our retiring, I found that only two had been converted, but after some discussion our number for an acquittal reached six, and six against. We remained like this for a long period, an hour at least. . . . We were all agreed on the point that the prisoner had taken liberties with the girl, and I have already stated that the discussion resolved itself into the question of how far the Prosecutrix had encouraged or in any way consented to what he had

done." The letter went on to describe the subsequent discussion of the jury and their request to the Recorder for assistance on the law. Clarke considered it then a very interesting illustration of the inner workings of a jury, and so it remains to-day after the passage of over half a century.

Clarke's reply was as follows :—

" 37, Russell Square,
29.5.1884.

Dear Sir,

I am greatly obliged to you for your long and interesting letter which I have read and very carefully considered.

The verdict on Friday last greatly disappointed me. Whatever might be the impression of the jury as to the substantial truth of the charge against Lord St. Leonards, it was a verdict of dangerous example, for the evidence upon which it was based was evidence upon which no jury should have convicted, and I am greatly surprised that upon their first retiring the jury should have been almost unanimously in favour of a verdict of ' guilty.'

Faithfully yours,

EDWARD CLARKE."

Another case which Clarke conducted in these early years as Q.C. calls for notice on account of the tragic circumstances attending it. He was briefed to defend a Doctor Haffenden and a Mrs. Hardie, who were jointly charged with procuring an abortion on Mrs. Hardie. Mrs. Hardie had terminated her pregnancy with a miscarriage, after Doctor Haffenden had operated on her and given her several prescriptions. The case for the Prosecution was, of course, that the prescriptions and operation had been directed to procuring the miscarriage. This the doctor indignantly denied, explaining that he had only operated for a tumour. After the prisoners had been charged, the case was adjourned for ten days, and Clarke fixed a consultation with Haffenden in his Chambers on the Saturday preceding the adjourned hearing. At the consultation Haffenden continually asserted his innocence,

and produced his prescription book for examination. All the prescriptions given to Mrs. Hardie were properly entered except one. Clarke pointed out to him the gravity of the exclusion of this one, and the inference that would be drawn from it. Haffenden was unable to explain the omission, and took his book home in an endeavour to solve the problem.

The morning of the trial arrived, and Haffenden was still without his solution. Unable to face a trial at which in spite of his innocence he felt his conviction to be certain, he committed suicide by taking opium, leaving a letter to his wife saying, "The fearful disgrace that has come upon us is more than I can endure. . . . I cannot live under the suspicion of this foul charge of which I am perfectly innocent." So when the prisoners were called upon to surrender, only Mrs. Hardie appeared, whom Clarke and Horace Ivory undertook to defend without fees. They called evidence to show that both the instruments and the prescriptions were consistent with a perfectly innocent operation, and that the injury could easily have been caused accidentally. Clarke made a final plea, in which he said: "Although I have had many cases to defend, I have never before had to defend both the living and the dead. Counsel for the Prosecution has chosen to conjoin the cases of the late Doctor Haffenden and the accused and make them one. Therefore if you find her guilty you are writing a terrible epitaph over the grave of the dead man."

The defence succeeded, and Mrs. Hardie was found "not guilty" amid applause. The explanation of the omission in Doctor Haffenden's prescription book was curiously simple.

Doctor Haffenden had given Mrs. Hardie a series of prescriptions which, it was alleged, she had used to help abortion. The police seized Doctor Haffenden's prescription book and compared it with the books of the chemist where Mrs. Hardie had her prescriptions made up. All the prescriptions in the chemist's book were properly entered in Doctor Haffenden's except one. From this it appeared that this prescription had been furnished by Doctor Haffenden for a guilty purpose and omitted deliberately.

The night before he died Doctor Haffenden spent in a frantic search through the entries in his book for the previous six months, which he supposed to be the relevant period. The reason for his failure to find it was that this particular prescription had been given by Doctor Haffenden to Mrs. Hardie over a year previously and the bottle which she had recently obtained at the chemist was a repeat dose and as such not entered in the Doctor's book. This simple explanation eluded the overwrought Doctor, who could not bring himself to believe that the prescription for the later dose was not entered somewhere in his book.

The acquittal of Julia Hardie and the vindication of Doctor Haffenden was very gratifying to Clarke and was a subject of considerable congratulation. A few weeks after the trial at the Old Bailey he received a letter from Doctor Haffenden's brother asking him on behalf of the Doctor's widow and a few immediate members of his family, to accept a salver as a slight recognition of the valuable services he rendered in clearing his character from the foul aspersions cast upon it. "Your generous conduct," continued Mr. Haffenden, "throughout the inquiry and subsequent trial—on behalf of one who was an utter stranger to you—the labour given so readily and untiringly and at the cost of so much valuable time have been, and believe me, ever will be most gratefully appreciated by all who loved my poor brother in life, and to whom, now he is gone, his honour and reputation are very dear."

Accompanying the letter was a handsome silver salver, which continued in daily use at Russell Square and later at Staines for over forty years. Welcome as the letter and the present naturally were to Clarke, the pleasure in their reception was tempered by the haunting fear that a greater alertness of mind on his part might have saved the life of an honourable and upright man. The salver remained in his house therefore as testimony of the gratitude of those who were indebted to his powers of advocacy and a daily reminder of the tremendous responsibility, measured in the lives and fortunes of others, which the practice of the law carries with it.

CHAPTER IX

EDWARD CLARKE, Q.C., M.P.

THE Parliament to which the Plymouth by-election of 1880 returned Edward Clarke was a Liberal Parliament. It won from T. P. O'Connor the title of Gladstone's Parliament because of the dominating position held in it by the Grand Old Man, who had withdrawn his retirement from politics and was a tower of strength on the Ministerial benches. On the Conservative side there was nobody of his calibre to oppose him. Disraeli, thinking that Gladstone was removed from active participation, had accepted a peerage in 1877, and left as Conservative leader in the Commons the blameless Sir Stafford Northcote. Yet, though the handling of the official opposition was tepid and uninspired, the course of Liberal statesmanship did not run smooth. The Parliament of 1880-1885 was ushered in to the accompaniment of the violent controversy which arose out of Bradlaugh's refusal to take the oath and thenceforth was dominated by the insistent theme of the Irish troubles. It was in this setting and against this background that Clarke served his period as an Opposition Back-bench Member.

By the time that Clarke entered the new House of Commons the flames of the Bradlaugh controversy were already burning themselves out. In the legal discussions which took place as to the right of an atheist to affirm instead of taking the oath, Clarke would have been well qualified to take part. It was not, however, until the question was revived in the April of 1881 on the point of Bradlaugh's withdrawal that Clarke intervened in debate. Then we are told by a writer on the other side: "Mr. Clarke put the case for his side with that easy grace which makes his oratory so pleasant to the ear, and his effort last night was the most successful since the maiden speech by which

he established his claim to a high place among the speakers of his Party." His first speech had been made on the IRISH DISTURBANCE BILL towards the end of July, 1880, the month in which he had been re-elected to the House of Commons. On this occasion we learn from the same source that "Mr. Edward Clarke made his first speech since his reappearance—a speech full of choice points, but marred by the usual prolixity of lawyers."

As to prolixity, it is true that Clarke's speeches seldom erred on the side of brevity; but it was an age of ample oratory. Be that as it may, there was at least one occasion on which Clarke resisted the temptation to make a speech. This was on the occasion when he detected the omniscient Mr. Gladstone in a statistical inaccuracy. He challenged Gladstone's figures, which had been quoted by the Prime Minister with the words, "No man can shake one of the figures I have laid before you," and announced his intention of raising the matter in the House. To this Gladstone replied by letter that it was more a matter for the Chancellor of the Exchequer than for himself, and for that reason he would make no reply if the matter was raised. On receiving this information, Clarke went to the Speaker and obtained his permission to read Gladstone's letter to the House and make a statement. After reading the letter, he announced that he thought that no useful purpose would be served by making a speech to which no answer would be made. Instead of delivering his speech, therefore, he caused it to be printed and copies to be sent to interested Members. Of this Clarke said: "I think my action made me for a time one of the most popular of men. That a lawyer, having the House at his mercy, and primed with a long speech on a dull subject, should refrain from delivering it and send it in print . . . was so new an experience that I believe the incident immediately and finally relieved me from the prejudice which was undoubtedly felt in the House against members of my profession."

Many of the issues which were so vital and so absorbing in those days have since become almost as remote in interest as the details of this statistical difference between Clarke

and Gladstone. There were subjects, notably that of a REDISTRIBUTION BILL to ensure better and fairer Parliamentary Representation, which considerably exercised Clarke's mind at this time and in which he was one of the Party's most prominent advisers. The details of such proposals are, however, of little or no interest to-day. What is of more interest is to attempt to assess the position held by Clarke in that Parliament. In the autumn of 1882 T. P. O'Connor described him as a "smart, aspiring young lawyer on the Conservative side." This is a somewhat depreciatory comment from one who had a considerable opinion of Clarke's powers of eloquence. The truth is that Clarke never in this Parliament quite fulfilled the promise of that maiden speech, made in circumstances of such opportunity at the end of the previous Parliament and described by Erskine May, the great constitutional historian, as the best maiden speech made in the House of Commons. Nevertheless, he was a useful Party man, who was considerably in demand for speeches both in the House of Commons and in the country on behalf of a Party not at that time very strong in rhetorical talent. For an exact evaluation of his political position regard must be had to the internal struggles which were at that time possessing the Conservative Party.

The period following the election of 1880 was characterised not only by the normal Party struggle, but by a degree of civil war within the ranks of both Parties. In the Liberal Party Mr. Chamberlain was challenging Mr. Gladstone's concept of what popular statesmanship should provide, while Lord Randolph Churchill advanced from the leadership of the obstructive and spirited Fourth Party to challenge Sir Stafford Northcote for the leadership of the Conservative Party. Clarke, like posterity, found these two challenging personalities the most interesting in the Parliamentary life of the day. There was, however, this important difference between the two. Mr. Chamberlain had done much to evolve the new policy of Radicalism and to organise its successful appeal to the working classes; in desiring to amend the more academic Liberalism of

Mr. Gladstone, he was guided by his own great experience and his own keen insight into the needs of the people. Lord Randolph Churchill's impatience with the Conservatism of Sir Stafford Northcote was reinforced by no such personal qualifications. With all his brilliance the new Parliament of 1880 found him a novice in politics, for he had spent a large portion of the previous Parliament in attendance on his father, the Duke of Marlborough, who was at that time Lord Lieutenant of Ireland. His attitude, therefore, while not lacking in sincerity, was largely, if unconsciously, influenced by his own ambition and the natural impatience of a young man fresh upon the scene with the prudent and seemingly dilatory proceedings of the elders in possession. Nevertheless, in a short space of time Lord Randolph Churchill, aided by circumstances and his allies, was able nearly to split the Conservative Party.

The circumstances lay primarily in the uninspiring conduct of the Opposition by Sir Stafford Northcote and the Conservative Front Bench. Of Northcote's tactics in Opposition nobody has found anything better to say than that he deemed it imprudent to afford to the electorate the spectacle of a Conservative Opposition opposing too much. The feebleness of the Opposition, standing out in sharp contrast with the brilliance of the Disraelian tactics to which the Party had grown accustomed, gave a splendid opportunity to a young politician possessed of such vigorous and resourceful eloquence as nature had bestowed on Lord Randolph Churchill. It was an opportunity that he was not slow to take ; but his chance came through the position he was able to obtain in conjunction with his friends of the Fourth Party. The other three members, Sir Henry Drummond Wolff, John Gorst, and Arthur Balfour, did not start their collaboration with Churchill with any idea of making him a candidate for the Conservative leadership. Balfour was naturally a supporter of the claims of his uncle, Lord Salisbury, and when Churchill hoisted his own standard, Balfour, naturally but unostentatiously, receded from the councils of the Fourth Party. Gorst had always cherished the idea of fortifying rather than replacing the

leadership of Northcote ; but when Churchill launched his campaign, he remained in association with him. Gorst was at this time, with the exception of Churchill himself, politically the most significant figure in the Fourth Party. Though he was a barrister by profession, the practice of politics had engrossed more of his attention. He had been appointed by Disraeli in the late 'sixties as Conservative "organiser of victory" in the widened franchise which followed the Reform Act of 1867. As we have seen, he was prominently associated with the formation of the National Union of Conservative Associations and with the formation of the Conservative working men's movement. In the result he contributed no mean share to the great Conservative victory in the Election of 1874. He did not, however, receive the reward of his labours, and by 1880 was on bad terms with some of the Party leaders, and consequently was in the right frame of mind for participation in Fourth Party activities. Though neither so brilliant nor so attractive a personality as Lord Randolph, Gorst had qualities which Churchill did not possess. He had great organising ability and a shrewd judgment, together with the lucidity and precision which legal training can give to a naturally good mind. The combination of his qualities with those of Lord Randolph Churchill not only made of the Fourth Party a political *tour de force*, but made their bid to secure control of the party machine one fraught with instant and enduring peril to those whom they desired to supersede.

What was Clarke's attitude to the machinations of Lord Randolph Churchill and the Fourth Party? He had met Lord Randolph at the Woodstock election in 1874 and remained on friendly terms with him : indeed, he spoke for him at the famous meeting at Aston, which developed into the Aston Riots, at the time when Party friction was at its height. But it would certainly have required the eye of faith to see in the stuttering, uninformed, and uninterested young Woodstock candidate in 1874 a man who in little more than a decade would be fit to hold the chief office in the land. As regards Churchill, Clarke did

not have this faith in 1874, nor, while appreciating his qualities, did he take so lofty a view of his deserts in the early 'eighties. His view of him was that he was "ill-equipped for the great task which he set himself when he resolved to become the leader of the Tory Party—he had little knowledge of literature and none of science, no familiarity with political history, and very slight acquaintance with foreign affairs." It follows from this that Clarke could not share Churchill's certainty that the Conservative Party would necessarily do better under his guidance than under that of the official leadership of the Party. With Gorst, Clarke had been associated many years before in the foundation of the National Union. As a frequent speaker on National Union platforms Clarke had naturally come into a certain amount of contact with Gorst, who discharged the function of organisation. The letters sent by Gorst to Clarke during Clarke's contest in the Dover by-election in 1873 are the most effective testimony to Gorst's industry in the task of organisation at that time. There does not, however, appear to have been any substantial degree of intimacy between the two men. Clarke, therefore, had no personal grounds for associating himself with the Churchill campaign; and on public grounds, while being himself a Tory Democrat and taking the view that Northcote missed many opportunities in his conduct of the Opposition, he did not think that the situation would be improved by vesting control of the Party machine in the hands of Churchill and his friends. He was therefore active in his defence of the official Party against the Churchill revolt, an attitude which was further promoted by the respect, ingrained in most lawyers, for order, propriety, and authority. He was an ally of whom the Party was very glad, for his powers of eloquence matched those of Lord Randolph himself, while his connection with the National Union, which was the principal battleground of the struggle, rivalled that of Gorst in point of time if not in intimacy of association.

The Churchill manoeuvres of the early 1880's constituted one in that series of revolts against the official policy and

composition of the Conservative Party, of which Disraeli's dethronement of Peel was the first and most brilliant example and Mr. Winston Churchill's unsuccessful opposition to the Indian Proposals of Mr. Baldwin is the most recent. Lord Randolph's revolt, like that of his son half a century later, was unsuccessful ; but it was a very near-run thing for the official Party. The aim of Lord Randolph Churchill was first to secure control of the National Union and then to obtain for the elected representatives of that body the administration of Party funds and the selection of candidates, functions which were discharged by a central committee, or caucus, nominated by the Party leaders. In 1882 Lord Randolph was co-opted to the Council of the National Union, and was thus in a position to press forward with his schemes for giving to the Council the authority held by the Central Committee, and by this means virtually transferring the control of the Party from its official leaders to the group which could obtain a majority on the Council. Clarke, as we have seen, had been elected a foundation member of the Council in 1868 and had continued to serve on it without intermission since that time. This long experience of the Council did not cause him to share Lord Randolph's view as to his efficacy for Parliamentary control ; on the contrary, quite apart from his view as to the question of the leadership of the Party, he felt that the Central Committee was far better qualified to deal with the intricate and delicate questions of finance and personnel. He therefore used his weight and influence on the Council to oppose the designs of Churchill and Gorst.

These designs were openly proclaimed at the famous Birmingham Conservative Conference of 1883. Here, after an eloquent speech by Lord Randolph, a motion was carried emphasising the desirability of the National Union exercising "its legitimate influence in the Party organisation." Gorst and Churchill hailed this as a great triumph, but the important thing was obviously the composition of the Council ; the motion itself was sufficiently vague to bear any interpretation which might be put on it by persons of varying view points. As to the Council, in the words

of Gorst, "Clarke, Chaplin, Claud Hamilton and a lot of other undesirable men got elected." The desired control of the Council, therefore, was not obtained despite Lord Randolph's election to its chairmanship in February, 1884, by a majority of two votes over Mr. Henry Chaplin. The truth was that the parties on the Council were too evenly divided to admit of smooth working. It is also an invariable truth that an attacking party, such as Churchill's was, requires a fair margin of numerical superiority, if it is to allow for the defection of supporters who sooner or later will wish to compromise with the official Party. This Churchill had not got, and the result was that in the pitched battle which was waged within the Conservative ranks in the spring and summer of 1884 his advance was stemmed and he began to lose ground. In May, Maclean, who had previously supported Churchill, moved the acceptance of a suggestion by Rowland Winn, the Conservative Chief Whip, that some members of the Council should confer with the Central Committee. Such a suggestion was eminently successful in the interest of compromise, but it was not compromise that Churchill wanted. He therefore opposed the motion, which was carried in his teeth, and a deputation from the Council set up, of which Clarke was a member, to confer with the Central Committee. Churchill now saw that he could get no further with the existing composition of the Council; he therefore resolved on a great effort to induce the Annual Party Conference to vote for his thirty nominees and thus secure to him a majority on the Council which would give effect to his wishes. The Conference took place at Sheffield and both sides brought to bear all their reserves of persuasion and eloquence to induce the delegates to return a Council of the desired complexion. Churchill opened with a powerful speech in which he exhorted the delegates, in the name of progress and action, to vote for his lists and make of the Council an effective instrument for the execution of his designs for Party control. Clarke replied on behalf of the official Party, and his case was strengthened by sixteen years' devoted service on the Council; he denounced the effort

by a newcomer like Churchill to expel from the Council men of great experience and long service, whose only crime was to support the official leadership and constitution of the Party. Both speeches were received with loud partisan applause, though it is doubtful whether they swayed many votes in an assembly most of whose members had already given their allegiance.

When the results of the election were announced, Churchill stood at the head of the list with 346 votes, and one of his supporters, Forwood, was second. Clarke was fourth with 289 votes, only nine behind Forwood, eighteen ahead of Chaplin who was fifth, and twenty-five ahead of Gorst, who was sixth. Twenty-two members in all were elected from the Churchill list, and nineteen from the official list ; three were elected who were on neither list, including Sir Michael Hicks-Beach and Balfour. The result was, therefore, a continuation of deadlock. Lord Randolph's attempt to capture the Party machine had failed ; and the hour for compromise had struck. Impetuous as ever, Lord Randolph, when once he had decided on the necessity of compromise, lost no time in putting it into effect. Without waiting to consult Gorst or even to inform him, Lord Randolph arranged terms with Lord Salisbury, whereby Hicks-Beach became chairman of the Council. The Churchill effort to dominate the Council was at end, and unity was restored to the Party. Lord Salisbury had succeeded in bringing " peace with honour " to the Conservative Party.

Clarke had played a loyal and active part in the defeat of the Churchill attack. He had for long occupied a prominent place in the National Union. In the House of Commons, however, most of the limelight centred upon the activities of the Fourth Party, and Clarke, whose extensive practice at the Bar would not have allowed him the time for political manœuvring with which fortune favoured those gifted individuals, occupied a less prominent position. He was, however, an active Backbencher, whose eloquence and powers of argument were of frequent service to the Conservative cause not only in the civil warfare described above, but in the more orthodox struggle against

the Liberal Government. The closing of the Conservative ranks in the summer of 1884 brightened the Conservative prospects in this struggle, for the Liberal Government had not succeeded in healing the dissensions within its own ranks. Its Irish policy had landed it in difficulties, as the Irish policies of British Governments invariably do. In February of 1885 came the news of the death of General Gordon, which infuriated the country against the Imperial inertia of the Liberal Government. Mr. Gladstone struggled on until the summer of 1885, when he took the opportunity afforded by a narrow defeat in the House of Commons to resign. The omens appeared to favour another period of Conservative administration.

A Conservative Government would entail Conservative Law Officers. Sir John Holker, who had been Attorney-General in Disraeli's Government, was dead, and Sir Hardinge Giffard, who had been Solicitor-General, was to be promoted to the Woolsack. This left vacant both these Offices, and there was considerable speculation as to who would fill them. There was nobody with claims so outstanding as to be overwhelmingly decisive, and therefore Clarke, with his large practice at the Bar, his striking successes in advocacy, and his respectable political record, had good grounds to hope that his ambition in this respect would be gratified. He was not, of course, the senior Q.C. in the House of Commons. The two senior Conservative Q.Cs in the House were Staveland Hill and Macnaghten. The claims of the former were not very actively canvassed, but Macnaghten, with his large practice and Parliamentary experience, seemed a certain choice—the more so as he had at the request of his Party leaders refused a Judgeship when it was offered him by the Liberal Lord Chancellor. Another candidate was Gorst. His position was peculiar in that though his claims were political rather than legal, the bulk of his political activity had of late been directed against the official Party. He had also become in part estranged from Lord Randolph Churchill, who by his failure to consult Gorst as to the compromise of 1884 had dealt a death-blow to the alliance on which had been based

his initial success. For this very reason, however, Churchill could not but press the claims to Office of Gorst, for otherwise he would have run the risk of being considered to have acted with base ingratitude. The support of Lord Randolph, who was designed to be the Chancellor of the Exchequer in the new Government, was Gorst's strongest card, as, though he had appeared in some notable cases including the Detectives Case, as third leading Counsel for the Crown his practice was not comparable to Clarke's.

These were the candidates from whom it was expected that the two offices would be filled. Rumour, however, produced another name, that of Richard Webster, who had appeared against Clarke in the Priestman case. Webster was not a Member of Parliament, though he was at this time a prospective Conservative candidate. His practice at the Bar was of a solid kind, and though considerably less spectacular than Clarke's, earned for him the same sort of remuneration. Additional point to the rumour was given by the fact that Webster went down to Launceston to arrange for his candidature for the seat which Giffard vacated on his promotion to the Woolsack. Further, Macnaghten was offered the Home Office with the promise of the reversion to the Chancellorship after Giffard. This offer he presciently declined, and indeed the reversion would not have been worth much, for Giffard proceeded as Lord Halsbury to a record tenure of the Chancellorship. These two pointers, however, were not lost upon Clarke or on the other Conservative lawyers interested. Clarke, always an apostle of direct action, at once wrote to Lord Salisbury, who had been preferred to Sir Stafford Northcote for the Premiership, to deprecate the appointment.

“ Carlton Club,
Pall Mall, S.W.

June 26th, 1885.

Dear Lord Salisbury,

It is with very great reluctance that I write to you upon the question of the appointment to legal offices, and if the matter concerned my own interests alone nothing

would induce me to do so ; but I have always received much personal consideration at your hands, and I think that in justice to yourself and in loyalty to the Party I have tried to serve I am bound to make this communication. The adjournment of the House of Commons until July 6th gives colour to the rumour, which until that incident I did not believe could possibly be true, that Mr. Webster was to be appointed Attorney-General. Such an appointment would be a public affront to all the Queen's Counsel now in the House of Commons.

Mr. Webster is a man of high character, of very great ability, and of well-earned distinction at the Bar, but he is junior in years and in length of professional standing to every one of those Queen's Counsel. And I think the result of his appointment would not only be the disaffection of supporters of the Conservative cause now in the House, but it would be a severe blow to the interests of the Party at the General Election. I know that in 1880 the fact that Lord Cairns had recently offered a judgeship to Mr. Herschell and upon his refusal had given it to Mr. Bowen did substantial injury to the Party, and now in view of a struggle in November which will tax all our energies if we are to hope to obtain a majority in the new Parliament, I think it will be extremely unfortunate that a public announcement should be made to the Bar that services rendered to the Party inside the House of Commons and outside its walls, are to be treated as an actual disqualification for professional promotion. Having regard to these consequences I think I am bound, and I hope you will think I am entitled, to call attention to them before the appointment is finally made.

I am, dear Lord Salisbury,

Very faithfully yours,

EDWARD CLARKE."

Lord Salisbury replied from Hatfield House on June 28th, saying that it was his duty, before considering the claims of seniority, to give due weight to the skilled advice of those whom it was his duty to consult, and to consider

the exigencies of Government both in the departments and in Parliament. He went on: "I much regret that these considerations in the particular circumstances of the case have not allowed me to ask for your official aid as yet. But you have a long future before you and under any political circumstances you cannot have long to wait."

Webster was duly appointed Attorney-General, his appointment being announced on the day after Lord Salisbury's letter to Clarke. By the same post as he had sent his letter of protest to Lord Salisbury, Clarke sent a copy of it to Webster. His action in so doing was characteristic at once of his complete and unswerving straightforwardness and of a bluntness of treatment which was another feature of his character. Webster took his action very well and wrote back:—

" Hornton Lodge,
Hornton Street,
Kensington, W.
July 2nd, 1885.

Dear Edward,

I thank you very much for your frank and true note just received. I value it very much and I feel that it in every way increases the bond of friendship between us. I have wished very much I could write to you. I did so hope your rights and work would have been recognised; I only hope you do not think I was wrong to accept the post. I trust I was not, but as I had never moved hand or foot or tongue to get it I felt perhaps it was right I should accept it. If I was wrong, you, I am sure, will not only forgive me but help me.

Believe me always truly,
Your friend,
R. E. WEBSTER.

E. Clarke, Esq., Q.C., M.P."

As can be gathered from the letters of Lord Salisbury and of Webster, Clarke did not become Solicitor-General either. This office, as a result of Lord Randolph Churchill's

pressure, was given to Gorst. Clarke always believed that Lord Salisbury would have preferred him to have the office, and both later events and the general probabilities of the situation lend weight to this theory. It is extremely unlikely that Lord Salisbury would desire the appointment of one whose chief claim lay in his active support of Lord Randolph in preference to one who had lent considerable aid in beating off that attack and whose professional status was also better. Be that as it may, and in spite of the encouraging assurance contained in Lord Salisbury's letter, Gorst's appointment could not but have involved grave disappointment to Clarke. The high hopes which he had legitimately entertained, to which he had given expression to his clerk six years before, and which had been encouraged by the prophecies of the newspapers and political tipsters, seemed to be dashed to the ground. Webster was his junior, and though Gorst was considerably older, their appointment made it unlikely that legal office could come Clarke's way for some time.

But there were adverse effects more immediate than that. One of the reasons suggested for the passing over of Clarke was the fact that his seat at Plymouth was not safe for the Party. In those days Ministers were compelled on their appointment to office to seek re-election at the hands of their constituents ; and naturally the new Conservative Government would not have wished its Solicitor-General to be defeated in his own constituency. In point of fact, it is extremely unlikely that this consideration influenced Lord Salisbury at all. But the General Election, which was due in November and was expected to confirm the Conservatives in power, threatened a close contest in Plymouth, in which this suggestion encouraged the Liberals as much as Clarke's failure to get office depressed his own supporters. The result was an exceptionally hard-fought contest in Plymouth, where Clarke had to put every ounce of his considerable energy into the struggle to save himself from defeat. He succeeded in doing this only by the narrow margin of 108 votes, and was merely Junior Member for the Borough, being more votes behind his colleague, Sir Edward Bates,

than he was ahead of the leading Liberal. In addition to this, the strain of the contest made him ill, and Sir William Jenner again ordered him away for a period of rest and convalescence.

On his return Clarke found that the elections—which in those days were spread over a considerable period—had gone less favourably than had been hoped in the country as a whole. Consequently, instead of the Conservatives continuing in office, Mr. Gladstone was returned to power. The disappointment of the Party as a whole was destined to redound to Clarke's advantage. The Liberal Government of 1886 was short-lived in the extreme. It opened with a period of violent controversy over the Irish question in which Clarke took no part, for he was then engaged in the defence of Adelaide Bartlett, whose trial for the murder of her husband was the dramatic and terrible climax to the strange relationship existing between Mr. and Mrs. Bartlett and the Reverend George Dyson.

CHAPTER X

THE TRIAL OF ADELAIDE BARTLETT

WHILE public affairs were engrossing the attention of the great and powerful in the land in the stormy months at the end of 1885, the attention of Edwin Bartlett, a citizen neither great nor powerful, was wholly concentrated upon his private affairs. With Edwin Bartlett his private affairs meant his business and his wife. Lately there had come a third element in the person of the Reverend George Dyson.

Bartlett's business was that of a grocer, and in grocery he pursued the conventional path to success, acquiring an extended chain of shops. With his wife he was, though successful in a sense, decidedly less conventional. She had been before her marriage Adelaide Blanche de la Tremoille, a picturesque name for the daughter of an unidentified Englishman of position. Such education as she had received in France was not sufficient to satisfy Mr. Bartlett, who had the reverence for learning often to be found in successful business men of little education, and so, Adelaide being only nineteen on their marriage, he decided that her studies should be continued: consequently, instead of the usual honeymoon, the young wife was sent away to school at Stoke Newington immediately after the wedding, which took place in 1875, and later to a convent school in Belgium. This was not the only strange feature of the marriage, for bride and groom had met each other only once before the wedding. This was at the house of Bartlett's brother, where Edwin Bartlett promptly decided to marry her. It was not, presumably, by her intellectual endowments that he was drawn; nor, if Adelaide Bartlett's story is to be believed, can it have been altogether her undeniable physical attractions which influenced his decision. For, according to her account, it was agreed between the parties to this strange

marriage that the ceremony should be only a form and that they should not live together as man and wife. A further consideration that may well have weighed with Bartlett was the substantial sum settled upon Adelaide by her father, which sum now became capital available for his business.

Whatever the true nature of the marriage, it progressed not unfavourably. In 1877, Adelaide came back to live with her husband at Herne Hill over one of his shops. There was little or no social life at this or any other period of their married existence, but Adelaide seemed quite content with her music, her embroidery, and her dogs. At any rate, there seemed no necessity to worry as to the future, for Bartlett's business was thriving and in 1880 he received an emphatic testimony to his prospects of long survival by being accepted by the British Equitable Insurance Company as a first-class life. The only disturber of the matrimonial happiness was Bartlett's father, a builder who had fallen on evil days and was now dependent on his son. At the beginning of the Bartletts' married life, Bartlett senior lived with his son and daughter-in-law ; but, instead of being agreeable to his permanent hostess, he did everything in his power to poison his son's mind against her. There was at this time some question of inappropriately intimate relations between Adelaide and her brother-in-law, Fred Bartlett, who certainly did vanish with sudden haste to America. Edwin Bartlett took his wife's part and insisted upon an apology and withdrawal from his father. This episode did not have the effect of reconciling Adelaide and her father-in-law, but it served to show him that she was mistress in her own house.

On this footing things continued smoothly until 1881, when Adelaide began to feel the longing to become a mother. When she found that she was pregnant, it became necessary to make arrangements for her confinement. The way in which she obtained her midwife was somewhat unusual. The Bartletts possessed a book, to which they devoted considerable attention, bearing the impressive title "Esoteric Anthropology ; or the Mysteries of Man." In fact, the

book was a treatise on birth control. It did not purport to be anything so vulgar, for Doctor Nichols, its American author, introduced the subject by pointing out that the only proper method of achieving limitation of families was to practise sexual abstention. Having given this advice, however, it occurred to the perspicacious doctor that there might be among his readers weaker vessels to whom this would be a counsel of perfection. For their benefit, therefore, he devoted considerable space to the elaboration of methods whereby they could combine indulgence with immunity. It may be that the doctor's perspicacity was well rewarded, and that the proportion of his readers who studied the description of such methods was greater than that which took to heart his high-minded recommendation of abstention. The question as to which of these categories included the Bartletts was later to become matter for anxious and urgent speculation. Its immediate importance, however, was that Adelaide Bartlett, desiring a midwife, went to Mrs. Nichols, who carried on a small practice on her own account, and that lady recommended Annie Walker. Annie Walker was a most competent nurse, but in spite of all her efforts Adelaide Bartlett, after a most painful confinement, was delivered of a still-born child. Then and there she decided never again to have a child. This resolution and much else, including her dissatisfaction that her husband had made a will leaving her all his property only on condition that she would not remarry, was confided to Annie Walker, with whom Adelaide Bartlett was soon on most friendly terms.

A little later on the Bartletts moved to Merton and there made a new friend in a very different walk of life. This was the Reverend George Dyson, a young Wesleyan Minister, whom the Bartletts heard preaching in the Merton Chapel. Clarke later described this young man as good-looking, but this was perhaps an exaggeration, suggested by a memory of the circumstances rather than the man's features. His face was rather pudgy, and the lower half of it was entirely dominated, and almost obliterated, by a heavy black moustache. It is perhaps natural, therefore,

that he made a favourable impression more quickly on Bartlett, to whom the fact of his degree at Trinity College, Dublin, was of more importance than his facial appearance, than on his wife. Under Bartlett's energetic enthusiasm, a close intimacy sprang up between the three. They were soon Adelaide, George and Edwin to each other—a most unusual circumstance with people in their rank of life in those days. But this was only one of many numerous indications of the spirit of harmony and trust prevailing. Edwin suggested that George should assist Adelaide to continue her studies, and with this suggestion Adelaide and the clerical gentleman readily complied; and for this purpose George would come round, with or without the books which one would have thought necessary to the discharge of his official task, and remain alone with Adelaide from about eleven in the morning until Edwin returned in the evening. When the Bartletts went to Dover, on holiday, Edwin urged George to accompany them and wanted to pay his fare. In the autumn of 1885, when the Bartletts left Merton to take up their residence in Claverton Street, Pimlico, the instructional visits were continued and George was a frequent guest to lunch and dinner. A further mark of confidence in George was made by Edwin when in that September he drew up a new will, appointing his solicitor, Mr. Wood, and the Reverend George Dyson as executors; this will contained no objectionable stipulation as to remarriage, for it bequeathed Bartlett's property unconditionally to his wife.

There was not at this period any obvious reason why the provisions of the will should become effective for a long time. Bartlett was then not quite forty years of age, and in his whole life had had only a fortnight's absence from business on account of illness. But, though so conventional in business he was a man of strange ideas. He had an idea that a man should have two wives, one for companionship and one for use. He asked the Reverend George Dyson in his capacity of Minister of Religion whether there was any justification for this view. Gravely the reverend gentleman replied that he could find no authority for the

proposition in the Bible. This failure in no way interfered with Edwin's regard for George or his complacency towards George's affection for Adelaide. The affection between these two was an accepted fact amongst this strange trio, and Edwin encouraged them to kiss in his presence. There was, according to Dyson, an understanding that, should anything happen to Bartlett, he should take care of Adelaide: though why anything should happen to a healthy man of forty was not clear. What is clear is that Bartlett was not normal in the view which he took of the relationship between his wife and the minister. This is illustrated by the letter which he sent to him in September.

" Dover.

Monday.

Dear George,

Permit me to say that I feel great pleasure in thus addressing you for the first time. To me it is a great privilege to think that I am allowed to feel towards you as a brother, and I hope our friendship may ripen as time goes on without anything to mar its future brightness. Would that I could find words to express my thankfulness to you for the very loving letter you sent Adelaide to-day. It would have done anybody good to see her overflowing with joy as she read it whilst walking along the street, and afterwards, as she read it to me. I felt my heart going out to you. I long to tell you how proud I feel at the thought I should soon be able to clasp the hand of the man who from his heart could pen such noble thoughts. Who can help loving you? I felt that I must say two words, 'Thank you,' and my desire to do so is my excuse for troubling you with this. Looking towards the future with joyfulness,

I am, yours affectionately,

EDWIN."

To this strange letter Dyson replied in what was, considering his calling, a less exalted and more rational letter.

" My dear Edwin,

Thank you very much for the brotherly letter you sent me yesterday. I am sure I respond from my heart to your wish that our friendship may ripen with the lapse of time, and I do so with confidence, for I feel that our friendship is founded on a firm abiding basis—trust and esteem. You have thanked me, and now I thank you. Yet I ought to confess that I read your warm and generous letter with a kind of half-fear—a fear lest you should ever be disappointed in me and find me a far more prosy matter-of-fact creature than you expect. . . . Dear old Dover, it will ever possess a pleasant memory for me in my mind and a warm place in my heart. With very kind regards, believe me,

Yours affectionately,

GEORGE."

This interchange of correspondence is susceptible of two meanings. It is possible that Bartlett may have been referring to the spiritual and intellectual good which he considered his wife was getting from her association with Dyson, and this was Dyson's explanation at the trial. It is also possible that Bartlett was one of those peculiar, if not perverted individuals, who get some satisfaction from the spectacle of their wives reciprocating another man's love. This is an explanation, which fits in well with the facts ; but the actual truth of this can never be known, as when these matters were publicly sifted, the unfortunate Bartlett was not there to state his own point of view. However this may be, when Dyson told Bartlett that his feelings for Adelaide were causing him embarrassment, and asked him whether it would not be better to give up the friendship, Bartlett urged him not to do so.

Thus matters stood in December of 1885. Adelaide and George Dyson were openly in love, and Bartlett was complacent ; Bartlett had made a will leaving all his money to his wife without any prohibition against remarriage ; Bartlett was forty and in reasonably good health ; Dyson was poor, and at present ineligible for marriage by the rules of the Wesleyan Ministry, but would soon be free

from that prohibition. It was not a situation which could endure without change. On December 8th Bartlett fell ill.

So healthy had the Bartletts been that they had no regular doctor, and when her husband's sudden illness necessitated her calling in one, Adelaide Bartlett called in a certain Doctor Leach for no other reason than that he lived nearby. On arrival Doctor Leach discovered that Bartlett was suffering from internal troubles, and from mercurial poisoning. There was, however, no apparent sign of the disease of syphilis, with which the taking of mercury is ordinarily associated. This aspect of his illness, therefore, remained something of a mystery. Doctor Leach, however, was soon able to bring relief to his physical disabilities; but he noticed that the mental depression resulting from them and the sleeplessness did not yield so easily to treatment. He then discovered that Bartlett's teeth were in a very bad condition, and he suspected that this might be the cause of the trouble. And well it might be, since some ten years earlier a dentist had supplied him with a plate, but instead of extracting the teeth in the ordinary way before fixing the plate, had simply sawn off the old teeth. The result was that the teeth were "in a horrible condition," and within the next week no fewer than fourteen of the stumps were extracted. It is not surprising, as a result of these complicated disorders, that Bartlett stayed in bed. He could have had no more devoted nurse than his wife, who converted the sitting-room into a sick-room and herself snatched what sleep she could get on a sofa at the foot of his bed. Visitors were few but regular: Doctor Leach every day, Dyson nearly every day, and Bartlett's partner in business, Mr. Baxter, every Sunday. Bartlett senior would willingly have been a regular visitor, but he was only allowed to see his son three times. He expressed dissatisfaction at the treatment of the case, and was anxious that a second doctor be called in. This desire had rather a curious result. Adelaide Bartlett told Doctor Leach that her husband's relations, who were most unfriendly to her, were anxious to call in another doctor.

Doctor Leach hastened to assure them that he had no objection to this course. But this Bartlett refused. "I will not see anyone they send," he told Doctor Leach, "I will see any gentleman you choose to bring; I am getting better, and I will not submit to any other treatment. I will see any gentleman once. I do this for the protection of my wife." Lest there should be any doubt in the doctor's mind as to the meaning of these last words Mrs. Bartlett amplified them by adding, "Mr. Bartlett's friends will accuse me of poisoning him, if he does not get out soon."

In accordance with what had been arranged, Doctor Leach called in a Doctor Dudley for examination and consultation. Doctor Dudley came to the conclusion that there was nothing fundamentally the matter with the patient, whom he urged to get up and have a change of air. This Bartlett resolutely refused to do, preferring to linger in bed. Thus matters remained over Christmas. Dyson, returning on December 26th after a visit to his father, found Bartlett much brighter. The following day he came again, but it being Sunday, did not arrive until nine in the evening. At the door he met Mrs. Bartlett coming out, and they walked along together. It was then that she made a surprising request. She asked him to get her some chloroform, with which she could soothe her husband and thus enable him to get some sleep. She said that she had been accustomed to sprinkle chloroform on a handkerchief for this purpose, and had previously obtained it from Annie Walker, who was now, however, absent in America. She went on to explain that she would require a fair amount, about as much as would fill an ordinary medicine bottle, owing to the method of administering it. To this strange request Dyson made surprisingly little demur, and promised that he would obtain the necessary supply. The following day he set out to execute his commission, seeing fit to distribute his patronage over three chemists' shops. He purchased in all four ounces of chloroform, which he took next day to Mrs. Bartlett. He did not, however, take occasion to deliver it to her until they had gone for a walk on the Embankment; nor in his visits to the sick man did

he find it necessary to refer to this unconventional method of inducing sleep.

Meanwhile Bartlett's illness went from complication to complication. Not only did the doctor discover in the condition of his teeth the beginnings of necrosis of the jaw, but the condition of his inside made necessary the administration of vermifuges and strong purgatives. This not unnaturally produced in the patient a severe depression. Nevertheless, the condition of his teeth necessitated a further visit to the dentist—a thing which Bartlett always held in horror. It was fixed for five o'clock on the afternoon of Thursday, December 31st. In spite of everything Bartlett dined omnivorously off jugged hare, and after a visit from Dyson, the Bartletts set off with Doctor Leach in a cab for the dentist. On the way Mrs. Bartlett talked of marriage. "This morning, doctor," she said, "Edwin and I were saying we almost wished that we were unmarried that we might have the pleasure of marrying each other again." "That is very flattering to you, Mr. Bartlett," replied the courtly doctor. And well he might think so, as he looked across at the huddled figure of Mr. Bartlett, and reflected with scientific detachment upon the multifarious ills of the flesh which beset that unhappy individual. The operation was a complete success, though it was observed that Bartlett required an unusually long time to emerge from the anæsthetic. When the Bartletts were back again in Claverton Street, they were visited by their landlady, Mrs. Doggett, who came up to inquire how the patient was progressing. Bartlett was quite cheerful and told her that he thought the worst was over, and referred to his intention of going to the seaside for a change. The subject of anæsthetics being at the moment obviously topical, Mrs. Bartlett asked Mrs. Doggett whether she had ever taken chloroform, and whether it was a pleasant feeling. Mrs. Doggett replied that she had, a long time ago, but that she did not know much about it. To this, Mrs. Bartlett remarked that Mr. Bartlett was in the habit of taking sleeping drops. After this Mrs. Doggett left Mr. Bartlett to eat a supper of oysters, tea and cake, having received his

order for a large haddock for breakfast. At about 10.30, by which time Bartlett was in bed, coals were brought up for the night. Mrs. Bartlett then gave instructions that nobody should enter their room again, and the Bartletts were left alone to see in, as best they might, their solitary New Year.

The dawn of the New Year in that household was early and gruesome. At four o'clock Mr. Doggett heard the sound of knocking on his bedroom door. It was Mrs. Bartlett. "Come down," she said, "I think Mr. Bartlett is dead." Doggett lost no time in hastening to his lodgers' room. There he saw Bartlett lying on his bed. "Do you think he is dead?" asked Mrs. Bartlett. Doggett put his hand on Bartlett's heart and found the body quite cold. "Yes," he replied, "he must have been dead two or three hours." At this Mrs. Bartlett offered an explanation: "I had fallen off to sleep with my hand round his foot, and I woke up with a pain in my arm, and found him lying on his face. I put him in the position in which you see him, and tried to pour brandy down his throat—nearly half a pint." After this Doctor Leach, whom Mrs. Bartlett had sent the servant to fetch, arrived and examined the body. He confirmed that the patient was dead, at which Mrs. Bartlett wept bitterly. But the doctor could discover no obvious cause of death, and Mrs. Bartlett could not add to the statement she had already made to Mr. Doggett. The whole affair was a mystery. On the mantelpiece, within reach of the bed, was a tumbler half-full of brandy, which seemed to lend colour to Mrs. Bartlett's story. But more noticeable and more disconcerting was the strange odour of chloric ether which pervaded the room and was noticed by both men and by Mrs. Doggett. They also noticed that the fire was burning brightly, and looked as if attention had recently been given to it—which, if a fact, could not square with Mrs. Bartlett's account of having been asleep. Matters could not be left as they were, and Doctor Leach decided that there must be a post-mortem by a Doctor Green, a well-known pathologist of that time. Mrs. Bartlett, who had been concerned at the idea of an inquest, appeared

quite to welcome the post-mortem, and was distressed when it had to be postponed to the following afternoon for the convenience of Doctor Green. Whatever the consistency of her attitude, that of Bartlett senior was perfectly straightforward. He was at no pains to conceal his suspicion of foul play, and vehemently pressed for an inquiry.

At the post-mortem next day no natural cause of death was discovered, but the contents of the stomach were preserved as being suspicious. Upon them Dr. Stevenson, who had been the principal scientific witness for the Prosecution in the Staunton Case, was engaged to report. To this report Doctor Leach added the information that Doctor Green thought he had detected the smell of chloroform. This information was naturally not such as to reassure either Dyson or Mrs. Bartlett; and, when they were alone, Dyson asked her the fate of the chloroform with which he had supplied her. Mrs. Bartlett was not very anxious to discuss the subject and urged him "to dismiss it from his mind at this critical time." This was exactly what Dyson could not do; but he considered that the next best thing was to divest himself of anything which connected him with the chloroform. Accordingly, he took the three bottles which he had obtained from the chemist, and threw them away on Wandsworth Common, while crossing it on his way to preach. Three days later Mrs. Bartlett poured the chloroform, either the whole of it or part, out of a railway carriage window and the bottle itself she disposed of in Peckham Rye pond. But though they could thus disembarrass themselves of the physical objects connecting them with the possession of chloroform, Mrs. Bartlett and her clerical lover could not disguise from themselves the disturbing nature of the situation. Their idyllic relationship was sharply invaded by disquiet. They had two interviews, one on January 7th, at which Dyson said that he had "reason to be alarmed" and the second two days later, when with many references to the imminent eclipse of his career in the Ministry, he could not hide his anticipation of the charges that might be brought. Dyson's affection was not of a quality to endure such rough weather

as this, and he saw Mrs. Bartlett no more until he testified against her.

By the end of January, Doctor Stevenson had completed his report on the contents of the stomach, and Doctor Leach had good news for Mrs. Bartlett. The cause of death, he reported, was chloroform. "That," he continued, "should set your mind at rest; but had it been one of the secret poisons given in small amounts, and which could be administered without the patient knowing it, you would most certainly have been very seriously accused by some people of having poisoned him." Her answer much surprised him, for she said: "I am afraid, doctor, it is too true. I wish anything but chloroform had been found." He urged her to explain, and she told him a remarkable story—a story told by her, and heard by him, in the belief, contrary to the practice of the English Law, that what is told by a patient to a doctor is privileged from repetition in a Court of Law.

"When I was married," said Adelaide Bartlett, "I was too young to understand what marriage meant. My husband's views as to marriage were peculiar, and we entered into an agreement that it should be entirely platonic and that no sexual intercourse should occur. Except on one occasion we abided by this agreement; the solitary exception was to enable me to have a child. But except for a short period of unhappiness caused by my father-in-law, my married life was pleasant enough, and we were on quite affectionate terms. No women were ever asked to the house, but he liked to show me off before his male acquaintances, and the more admiration and attention I received from them the more delighted he was. Then Mr. Dyson came along. My husband threw us together. He asked us to kiss in his presence, and he seemed to enjoy it. He said that he had given me to Mr. Dyson. Then a strange thing happened. During his illness he began to show signs of wanting to exercise the rights of a husband which he had never claimed before. I resented it, and reminded him that he had given me to Mr. Dyson. I pointed out that it was wrong for him to wish this, and he agreed with me.

Nevertheless, as he began to get better, his desire became more urgent, and I had to try and think of some method of preventing him from putting it into execution. I got some chloroform with the object of sprinkling some of it on a handkerchief and waving it in his face every time it was necessary, thinking that in that way he would go peacefully to sleep. I was worried, however, as to whether I was doing the right thing, and on New Year's Eve, I showed him the bottle and told him about it. We talked seriously, yet in a friendly way, about it, and about our relationship to each other. He looked at the chloroform and put it on the mantelpiece by his side. He then turned on his side and pretended to go to sleep; soon he was asleep, and then I fell asleep in my usual place in my chair at the foot of his bed. The next I knew was when I woke up and found him dead."

It was obvious that Adelaide Bartlett was in grave danger. Evidence was given at the inquest by Doctor Stevenson that death was due to chloroform; and Dyson fulfilled the intention which he had previously expressed to her of "making a clean breast of it." Before even the Coroner's jury found a verdict of wilful murder, the foreman announced that Mrs. Bartlett should no longer be left at liberty; and she was duly taken into custody. At the inquest Adelaide Bartlett had been represented by Junior Counsel. But her defence in what an eager public was characteristically terming *The Pimlico Mystery*, was clearly not a matter for him alone. Messrs. Lewis and Lewis, who were entrusted with the Defence, felt that a charge so grave, fortified by evidence so formidable, was one that demanded the resource and address of the man who had secured the acquittal of Inspector Clarke and Esther Pay, and had saved the Stauntons from the gallows. Edward Clarke was accordingly briefed for the defence.

As soon as Clarke got the papers in the case, he realised that there were involved medical points more intricate than anything that had come his way since the Staunton Case. Following the practice which he had adopted in that case, he devoted himself to a close study of the effects of

chloroform and the methods of its administration. In order to be able to do this thoroughly, not only did he return other briefs ; he absented himself for a fortnight from the House of Commons, which in the early months of 1886 was the scene of violent and prolonged controversy over the Irish question. Sir Charles Russell, who was to lead for the Prosecution, had, as Mr. Gladstone's Attorney-General and a wholehearted Irish Nationalist, neither the opportunity nor the desire so to absent himself. The consequence was that at the trial Russell was not nearly so well versed in the technical aspects of the case as Clarke. This was to prove an important advantage to the Defence. But the Defence certainly stood in need of every advantage which it could get, and Russell may be forgiven for underestimating the difficulties of his task. For the case for the Prosecution was effective in its simplicity. With regard to motive and opportunity the case was clear. Mrs. Bartlett was in love with a man other than her husband, whom she could not marry except after her husband's death : if he should die, not only would she be able to marry Dyson, but she would have all her husband's means to fortify that gentleman's slender income. The opportunity was equally clear : had not Mrs. Bartlett been alone, and in the possession of chloroform, on the night of his death with her husband, after giving careful instructions that they were not to be disturbed ? With motive and opportunity established, there remained the mode of death. This was undoubtedly due to the administration of chloroform, which could have got there only as a result of suicide, accident, or murder. The possibility of suicide was brushed aside by the Prosecution as being without motive and unsupported by evidence : the theory of accident was impossible because anybody taking a draught of liquid chloroform inadvertently would experience such immediate agony of burning that his cries and groans of anguish must have been heard throughout the house. With accident and suicide ruled out there remained murder ; and if it was murder, it could have been committed only by Adelaide Bartlett. There was only one difficulty with regard to the theory of murder : swallowing

under the administration of another person would produce the same agony and the same inevitable cries as in the case of swallowing by accident. Russell did not consider this difficulty of much importance, as the Prosecution's theory was that Bartlett was first lulled into insensibility by an external application of chloroform, and that it was in this state that he was forced to swallow the chloroform that caused his death. It was on this difficulty that Clarke's defence was based, for he perceived that it was only if he could prove that the theory of the Prosecution was impossible, or at least open to serious objection, that he had any chance of an acquittal.

Before the Attorney-General outlined the Prosecution's theory to a Court packed with fashionably dressed women—a phenomenon sufficiently unusual in those days to provoke the adverse comment of Mr. Justice Wills in his summing up—he produced a surprise. The Prosecution announced that no evidence would be offered against Dyson, who was also charged with the murder of Bartlett, and invited a verdict of “not guilty” to be taken in regard to him. This was accordingly done, and Dyson left his place in the dock beside Mrs. Bartlett. The reason for this was, of course, to make it possible to call Dyson as a witness for the Prosecution against Mrs. Bartlett. But this was not altogether a disadvantage to Clarke, for it enabled him by judicious cross-examination of Dyson to bring out certain points in the story of Bartlett's peculiar attitude to matrimony, which would otherwise have had to remain unrevealed for want of a witness to speak to them. Dyson's action would also have the inevitable effect of arousing the natural antipathy of the jury towards him, and promoting in them a chivalrous disinclination to send Mrs. Bartlett to the gallows while he went free. Clarke, who was not, of course, able to call Mrs. Bartlett, had decided to call no witnesses for the Defence, and to rely on his cross-examination of the opposing witnesses and on his speech to the jury. These witnesses fell into three categories: hostile, in the person of Bartlett senior; completely impartial, in the persons of Doctor Stevenson and Doctor Tidy, the

expert witnesses, and those disposed through past association to be friendly, such as Dyson, Doctor Leach and the Doggetts. Clarke had no difficulty in showing Bartlett senior to be prejudiced. The cross-examination of Mrs. Doggett was devoted to trying to remove the obstacle to the probability of Mrs. Bartlett's story contained in the fact that the fire was burning brightly at four o'clock on the morning of death. Upon Mrs. Doggett Clarke urged the theory that the true explanation of the fire was that it had been packed overnight with the natural result that it had burnt underneath, leaving a crust of coal on the top, which would be dispersed into bright flames as a result of the one blow with the poker, which Mrs. Bartlett would instinctively give to the fire before summoning Doctor Leach and the Doggetts to the room on that cold New Year's morning.

This story if accepted by the jury, would remove the chief barrier against the credibility of Mrs. Bartlett's story of being asleep during those fatal hours. The cross-examination of Dyson and of Doctor Leach was considerably more intricate, and each involved a difficult individual problem. Dyson had been associated with Mrs. Bartlett throughout a large part of the story now produced by the Prosecution against Mrs. Bartlett, and had been in love with her. As in his cross-examination of Superintendent Williams in Inspector Clarke's Case, therefore, Clarke's task was so to frame his questions as to get the maximum benefit from the friendly feeling without pressing the witness so far as to risk injurious answers. In Dyson's case there was the additional necessity of identifying Dyson with Mrs. Bartlett's actions up to as late a period in the story as possible, so that for his own sake Dyson would be obliged to depict the events in a favourable light. In this and in the cross-examination of Doctor Leach, where it was necessary to overcome the doctor's self-consciousness at finding himself a central figure in such a trial and to put him at his ease, Clarke was triumphantly successful. As a result of the cross-examination of these two, Clarke had presented to the jury the idea of Bartlett as a strange, rather unbalanced man, tenderly nursed in his last illness by his wife, but

depressed by the cumulative effects of his various disorders and by the refusal of his wife to yield to him the physical rights of a husband. He had evoked the picture of an intending suicide.

But the crux of the whole case, by which stood or fell Clarke's defence, was the medical aspect. Here, Clarke's object was to obtain from the Prosecution's experts admissions that the earlier the conduct of the post-mortem, the greater the probability of the accurate discovery of the cause of death; and, more important, agreement to his proposition that the administration of chloroform to a sleeping man would be a most difficult and delicate operation, hazardous of success even in the case of an expert. The long, patient, and technical cross-examination of Doctor Stevenson and Doctor Tidy by Edward Clarke in this case can be read in full in the verbatim account of the trial published with a preface by himself, in 1886, or in the volume ably edited by Sir John Hall in the Famous Trial Series; it should so be read by anybody desirous of seeing an outstanding example of the cross-examination of expert witnesses on their own ground by a brilliant and resourceful advocate.

As the case went on Clarke became absorbed in it to the exclusion of all else. He was struck by the pathetic defencelessness of Adelaide Bartlett, as, fragile and pale, she was escorted each morning into her grim place in the Old Bailey. Each morning he made a point of arriving in Court a few minutes early so that when she took her stand, there would be at least one friendly face to greet her and to calm her fears. Neither this nor his great efforts on her behalf were lost on Adelaide Bartlett, who sent him a note in the course of the trial: "Monsieur, I am very grateful to you, although I do not look at you." But Clarke realised that it would require one of his greatest efforts to defeat the case the Prosecution had set up and to save the life of his client. He, therefore, devoted himself with minute care to the preparation of his speech to the jury.

To a tense and expectant Court, Clarke's opening words rang out like a confident challenge: "May it please you,

my Lord, Gentlemen of the Jury—in this case you have now heard, in its fullest detail, the evidence which the Crown has to lay before you in support of this charge, and, having heard that evidence, and believing that I have been able to trace the effect of it upon your minds, I now in Adelaide Bartlett's name claim from you a verdict of not guilty." He went on to make a bid for the jury's sympathy, not this time on the ground that Mrs. Bartlett could not give evidence in her own defence—a disability which she shared with all prisoners—but because in this case the Attorney-General's right to the last word in all criminal cases in which he appeared deprived Clarke of the reply to which, as having called no witnesses, he would otherwise have been entitled. This right of the Attorney-General's, like the prisoner's disability, was a matter in regard to which Clarke was a strong advocate of reform. In this case he believed, or affected to believe, that the prisoner would be at a special disadvantage on account of the Attorney's right to the last word, for "my learned friend, coming from a country distinguished far more for its advocates than for its judges, may import a combative instinct into the conduct of this case."

Having thus prepared the ground, Clarke proceeded straight to the medical issue, for he realised that, whatever theory he could advance as to the manner of Bartlett's death would have no chance of acceptance unless he could first discredit the theory of the Prosecution. Using the admission which his close study of the subject had enabled him to win from the Prosecution's experts, his argument in brief was this:—It is admitted by the Prosecution that Mrs. Bartlett could not have administered the chloroform to her husband internally, while he was awake and fully conscious. It is also true that the external application—or inhalation—of chloroform cannot be made to a waking person without provoking his resistance. The Prosecution, therefore, are compelled to adopt the theory that Mrs. Bartlett made the external application of chloroform to her husband while he was asleep and, having thus ensured his insensibility, proceeded to force the liquid chloroform down

his throat. Now what are the probabilities as to the external application of chloroform to a sleeping man? The authorities are conclusive that such administration would contain the overwhelming probability that the person would awake and resist. It is in the highest degree improbable that an unskilled person would ever be able to transform sleep to anæsthesia by the influence of chloroform without waking the person who was subject to that process. But suppose that this almost insuperable difficulty is surmounted, and the unskilled hand of Mrs. Bartlett has made her sleeping husband insensible with chloroform, how does she then stand with regard to administering the liquid chloroform? Doctor Stevenson has told us that there are four stages in the external application of chloroform. In the first two the patient is still conscious, and therefore any attempt to pour burning liquid chloroform down his throat would provoke him to savage resistance. It would therefore be impossible for her to do it while her husband was in these two stages. What of the third stage? In that, the jaw becomes rigid, and it would need a force and violence, which no single person could use, to open the mouth and pour the chloroform down the throat. Last, there is the fourth stage, when the patient is perfectly insensible and the muscles relaxed. But then it is impossible to pour any liquid down the throat at all because the relaxed muscles prevent the act of swallowing. If an attempt was made at this stage to force any liquid down the throat, some of it would undoubtedly get into the air passages and there cause choking: after death the chloroform would be discovered at the post-mortem in the air passages. But in this case a post-mortem was carried out, and the air passages were found to be free from chloroform. Therefore, in none of these stages could Mrs. Bartlett have successfully performed the feat which was laid at her door. The theory of the Prosecution must fall to the ground because it was extremely improbable that Mrs. Bartlett could have performed the first act that this theory demands of her: even if she could have done so, it is absolutely impossible that she could have performed the second.

Having put forward this argument with a wealth of authority and example, Clarke passed from the scientific aspect of the case with the words: "I submit to you that the result of those considerations makes it impossible for you to return a verdict of 'Guilty' in this case." In a brilliant passage he then went on to show how strong a case could be built up against Dyson, on whose evidence the Prosecution were relying to convict Mrs. Bartlett, by reliance on just that same quality of incident which was being prayed in aid against her. Next he faced the question of Mrs. Bartlett's account of her relations with her husband. It sounded improbable, but there was to support it not only her own words, not only the evidence of several of the Prosecution's witnesses as to the peculiarity of Bartlett's ideas, but also that letter of his to Dyson, which he read. "A loving letter written to Adelaide! Why did he write to express thankfulness to another man for having written that letter to his wife? A loving letter to his wife! There is, so far as I can see, no conceivable explanation of it but this—that the relations between his wife and himself were not the relations of marriage in its deepest and in its closest ties, but that they were such relations that he could quietly, calmly, without any pang of jealousy, look upon the rising and growth of an affectionate attachment between that wife and another man . . . of all the strange things that this Court has heard, and the multitude of cases which have here been tried involving the closest and deepest relationship of lives, nothing stranger has ever been read than that letter. Here 'Yours affectionately, Edwin,' is with apologetic humility thanking the man who had written a loving letter to the wife which made her overflow with joy as she read it to her husband. That letter is the key of the whole case. Without it, it might not be possible to believe the statement that Mrs. Bartlett made as to their marital relations; with it, I venture to say it is impossible to disbelieve that statement and to suggest an intelligible explanation of the words and phrases that that letter contains."

After going carefully through the circumstances of Bartlett's illness, Clarke came to his own theory. "Mr.

Bartlett had so behaved as in fact to have given or dedicated his wife for the future to Mr. Dyson. Then he desires to re-assume his rights, but is resisted, and on this night when he has suffered during the day, when he has undergone this operation and must undoubtedly have suffered from his condition, he is told by her that the consent which he has given with regard to Dyson's relations is treated by her as an irrevocable decision, that he has ceased to enjoy the rights that a husband may exercise, that she has taken him at his word, and that from this time onwards co-partnership must remain co-partnership and shall never be allowed again to pass into the associations of marriage. He was grieved, he appeared very grieved, and he turned over. Suppose," he said to the jury, "you now sketch in imagination what took place. Suppose she left the room as usual to wash, and he had placed on the mantelpiece this bottle of chloroform. There was a wine-glass there—that wine-glass was found afterwards—and while she was away it was perfectly easy for him without leaving his bed, lifting himself only on his elbow, to pour into this wine-glass the less than half a wine-glass of chloroform which may have constituted that fatal dose, to have replaced the bottle, and then to have taken it off. Having drunk it, he resumes his recumbent position, the chloroform passes down his throat and reaches the stomach. There is no difficulty, nothing unreasonable, nothing extraordinary, as tested by the cases which have been quoted here; within two or three minutes he might be passing into a state of coma. She returns and goes to sleep, and her husband's coma deepens into insensibility, and insensibility passes into death."

Then at the close of his long speech Clarke looked across at the dock where the pale, almost lifeless figure of his client sat huddled in the agony of her ordeal. The voice, strong and challenging through all the hours of logical reasoning, took on a softer and appealing quality. "This woman," he said, "has not had the happiest of lives. She has been described to you as one who has no friends; but she had one friend—her husband. He did stand by her, strange as his ideas may have been, disordered as in some respects his

intellect must have been. He was affectionate in manner, and when her reputation was assailed, he defended it as only the husband could defend it. And to her at this moment it may seem strange that he to whom she had given this persistent affection should be the one of whose foul murder she now stands accused. And if he himself could know what passed amongst us here, how strange, how sorrowful, it might seem to him that such an accusation should have been made in spite of the efforts which he made to prevent it, precautions which perhaps by his own rash and despairing act he too completely defeated."

"Gentlemen," he continued, "that husband, too, has gone but she is not left without a friend; she will find that friend here to-day in the spirit which guides your judgment. I believe that as a case like this goes on from day to day there comes into your heart a deep desire which is in itself a prayer that the spirit of justice may be amongst us, and may guide and strengthen each one to fulfil his part. That invocation is never in vain. The spirit of justice is in this Court to-day to comfort and protect her in the hour of her utmost need. It has strengthened, I hope, my voice; it will, I trust, clear your eyes and guide your judgment. It will speak in calm and measured tones when my lord deals with the evidence, and that spirit will speak in firm and unfaltering voice when your verdict tells to the whole world that in your judgment Adelaide Bartlett is not guilty."

Clarke sat down at the conclusion of his six hours' address "amidst such a burst of applause as is seldom heard in an English Court." Judged by any standards, it was a great forensic effort. It began to appear both to the packed spectators in the Court and the crowds that were gathering in restless anticipation of the verdict outside the Old Bailey that Adelaide Bartlett had a fair chance of acquittal. As for Clarke himself, his passionate desire to secure the verdict in accordance with what he believed to be the justice of the case tormented him, during Russell's fluent and effective reply, with the feeling that he might have left unsaid something which could have been of assistance to his client. In the course of Russell's speech Clarke received from the

midwife, Annie Walker, a communication that she knew from Mrs. Bartlett that the conception of the still-born child had been the result of a single act. Clarke obtained permission to recall her, and got this in evidence. Mr. Justice Wills, however, by further questions, learned that what she meant by this was that there had only been a single act without preventives. The result of this amplification, supported as it was by the nature of the articles found in Bartlett's pocket, was naturally to prejudice the platonic theory of the Bartletts' relationship. The Judge in his summing-up, in which he referred in scathing terms to the sexual outlook of the Bartletts, showed that he at any rate was sceptical of it.

It was three o'clock on that Saturday afternoon when the jury retired to consider their verdict. The Court waited for the verdict in mounting suspense, which was quickened when the jury returned to ask for further information on a point of fact. When they finally returned they gave their verdict in an unusual form: We have considered the evidence, and, although we think grave suspicion is attached to the prisoner, we do not think there is sufficient evidence to show how or by whom the chloroform was administered. This amounted to a verdict of Not Guilty, and when it was formally pronounced, the crowds outside burst into frantic enthusiasm. Clarke himself, overcome by his feelings, broke down for the first and only time in his long career of advocacy and sobbed his relief. Meanwhile, Wills was restraining the cheering of the people inside the Court. But nothing could check the enthusiasm of the enormous crowds outside, and when Clarke's brougham made its appearance they escorted him through Holborn to his house in Russell Square. That night he and his wife went to the Lyceum Theatre, where Ellen Terry and Henry Irving were playing "Faust," and the whole house rose and cheered their entry. It was a popular triumph perhaps unparalleled in the annals of modern advocacy.

Clarke's triumph was the only element of the case on which there was agreement. The true history of this strange episode remains one of the mysteries of criminology. It is

perhaps unlikely, in the face of Annie Walker's statement, that the theory of platonic relationship between the Bartletts, and her refusal to abandon them provoking a diseased and depressed husband to suicide, is the correct one. But it must be remembered that Bartlett kept the articles in his trousers pocket, which suggests that they were intended for outside rather than home use. It may well be that Bartlett, who was certainly peculiar in his sexual ideas, had resort to other women, while deriving a perverted pleasure from the admiration that his wife was able to arouse in other men, notably Dyson. If this was the case, the month which he spent indoors at Claverton Street would cut him off from his contact with other women, and may have provoked in him the feeling of desire for his own wife, which Mrs. Bartlett spoke of and resented. But Clarke won the verdict chiefly on his handling of the medical aspect of the case. With regard to this aspect Russell in his reply put forward two new suggestions: first, that the inhalation of chloroform may have started before Bartlett fell asleep and secondly, that he may himself have drunk the chloroform, when she handed it to him, supposing it to be some medicine. Both of these hypotheses were open to objection, and had not formed part of the Prosecution's theory at the start, being introduced to meet some of Clarke's criticisms. It shows the advantage which Adelaide Bartlett derived from Clarke's superiority in technical knowledge to Counsel for the Prosecution.

Despite the popularity of the verdict, contemporary feeling was that Mrs. Bartlett was somewhat lucky. This is summed-up in the postscript of a letter to Clarke from Lord Chief Justice Coleridge, in which he congratulated him on the result of the case: "I hear a good thing attributed to Sir James Paget* that Mrs. Bartlett was no doubt quite properly acquitted, but that now it is to be hoped *in the interests of science* she will tell us how she did it!" Whatever may have been the truth with regard to this, it is clear that if the Defence had been placed in different hands the verdict might well have been otherwise. Lord Lytton said no more than the truth when he wrote to congratulate Clarke, "on

* The distinguished surgeon.

the merited success which has requited your splendid effort of eloquence and intellect—for the unfortunate woman who owes her life to your exertions on her behalf.”

Adelaide Bartlett herself wrote to him an interesting letter from Brighton, where she had gone after the verdict :—

“ 66 Gresham Street.

April 24th.

Dear Sir,

Forgive me for not earlier expressing my heartfelt gratitude to you, I feel that I owe my life to your earnest efforts, and, though I cannot put into words the feelings that fill my heart, *you* will understand all that my pen fails to express to you. Your kind looks towards me cheered me very much, for I felt that you believed me innocent. I have heard many eloquent Jesuits preach, but I never listened to anything finer than your speech (*sic*). My story was a very painful one, but sadly true, my consent to my marriage was not asked, and I only saw my husband once before my wedding day. I have not been a good woman and my temptations have been terriable (*sic*) ones, but though I have not kept my vows as I should have done you will judge me mercifully. I am much gratified that Doctor Stevenson has written to say that he concurs in the verdict. I received great kindness at Clerkenwell, from the Governor to the lowest, they did their best to comfort me.

Assuring you that I shall ever remember you with feelings of deepest gratitude,

I am,

Sincerely yours,

ADELAIDE BARTLETT.”

Clarke had no further personal contact with the people who figured in this case, as he had in the Staunton Case. The authors have an impression that the strange story of Adelaide Bartlett and George Dyson had an even stranger outcome in their eventual marriage ; but this impression they have been unable to confirm as there is a conflicting theory that after the trial the two never set eyes on each other again.

CHAPTER XI

PARNELL AND OTHERS

CLARKE thought that the Bartlett Case was well worth six months as Solicitor-General. Apart from the great personal interest which the case had held for him, it was of great use to him in the prestige that it conferred upon him. The immediate financial rewards of the case were not large, but, as after the Staunton and Detectives' Cases, the great reputation which his unexpected victory brought him took material shape in the increased practice appearing in his fee book, and in the new clients figuring therein. Just as those two cases had come at a most opportune moment in his career as Junior Counsel, so did the Bartlett Case come his way when it was most desirable that his name should be brought prominently before the public. The result of it was that people looked on him as being the natural choice for one of the Law Offices when the Conservative Party should again come into power.

At the end of April, 1886, when Clarke returned to his place in the House of Commons, it looked as if this time would not be far distant. The Irish question already showed signs of splitting the Liberal Party, for there were many who refused to follow the lead even of Mr. Gladstone in the matter of Home Rule. Though Clarke had scarcely figured in the House during April, he returned in time to take part in the memorable debate of May, which resulted in the defeat of Home Rule, the fall of Mr. Gladstone's Government, and the formation of the Liberal Unionist Party. In this debate Clarke followed a future Liberal Prime Minister in the person of Sir Henry Campbell-Bannerman. The ninety-two Liberals who voted against the Government were more than enough to ensure its defeat. Clarke, in common with the other Members, went to prepare

for the General Election. This time, with a divided Opposition and new Liberal candidates, the task at Plymouth was much easier; and Clarke not only retained his seat with a comfortable majority, but had the satisfaction of becoming for the first time Senior Member for Plymouth, being four votes ahead of Sir Edward Bates.

Once more Lord Salisbury was faced with the task of forming a Conservative Government. Webster was, of course, to become Attorney-General again; but there was a strong feeling, in which Lord Randolph Churchill shared, that Clarke should have office in the new Government. He himself did nothing to press his own claims, but this time they were not overlooked. On August 2nd, Lord Salisbury wrote to tell him that Gorst had "intimated his preference for a political career" and that he "naturally turned to him in the hope that he would accept the office of Solicitor-General." Mr. Harold Gorst, in "*The Fourth Party*," states that his father was only offered the Solicitor-Generalship on this occasion on the understanding that he would accept the reversion of the first Judgeship which should fall vacant. This being so, Clarke would very soon have had the offer of the appointment in any event. He signified his acceptance to Lord Salisbury, and next day received a very pleasant note from Webster:—

" 2, Pump Court, Temple.
3rd August, 1886.

My dear Clarke,

If the report in *The Times* be true, you know already how truly I congratulate you, the country, and last but not least myself. I have often told you, and I can only repeat, there is no one living under whom, or with whom, I would more gladly work than you.

Always most truly yours,
RICHARD WEBSTER."

The private relations between Clarke and Webster had not suffered from Clarke's protest to Lord Salisbury about Webster's appointment in the preceding year; and their

official relations for six years as Solicitor-General and Attorney-General respectively were smooth and harmonious. Clarke said of them that "my relations with my legal colleague were very pleasant," while Webster has left it on record that "the whole profession treated me with the greatest loyalty, and particularly my old and distinguished friend, Sir Edward Clarke."

It was Webster, however, who was the senior partner and Clarke the junior. Webster, though a man of great patience and industry and large practice at the Bar, was not a particularly inspiring figure, and lacked the sensitiveness necessary to a good politician. The reason for his appointment as Attorney-General in 1885 at a time when he had no experience of the House of Commons, remains obscure, the more so as there were several tried Parliamentarians of considerable practice who were available for the position. Such an appointment half a century later, when the duties of the Law Officers are as much political as legal, would certainly be surprising and probably misguided; to-day the Law Officers are far more frequently consulted by the Cabinet, and the answers that they give often have to take account of political repercussions as well as legal effect. The appointment of a man of no Parliamentary experience would in these circumstances be in all likelihood a rash and unjustifiable gamble. At the time when Lord Salisbury appointed Richard Webster, this consideration did not operate so powerfully, for the Law Offices had then less political importance; those who held them were less frequently consulted by the Cabinet, and were allowed to continue their private practice at the Bar. It is no doubt in this different status of the Office in those days that the reason for Webster's appointment must be sought. Be that as it may, it was a blow for Clarke because it meant that his contemporary stood always ahead of him in the path of preference.

Clarke always considered that this preference was a turning-point in his career; and so in a sense it was. As he himself said, "But for his action I should have been Attorney-General in 1897; but for him I should have

been Lord Chief Justice in 1900." This is no doubt a correct estimate of what his career might have been. But it is open to question whether Clarke was not somewhat inconsistent in attributing so much importance to it. In 1897 he was, after Webster's refusal of it, offered the position of Master of the Rolls, a position which though less in popular repute than that of Lord Chief Justice, is scarcely less in legal stature; this offer he declined. Further, it should be borne in mind that he had originally embarked upon practice at the Bar in order to open the door to political life. The fact that Webster stood in his way in the path of legal advancement did not close to him the alternative route of political office. This possibility, curiously enough, does not seem to have occurred to him. Had he, in 1895, at the start of Lord Salisbury's next Administration, intimated his desire for departmental office, no doubt so experienced and valued a member of the Party would have been given some post in which he would have had a chance of showing the extent of his executive and parliamentary talents. Such a course of action would, however—at any rate while the Conservative Party was in power—have cut him off from practice at the Bar. The inference is, therefore, that with the passage of years and the active and exciting absorption in the varied cases which his extensive practice brought, Clarke's viewpoint had gradually and unconsciously altered; the Bar, instead of being an essential preliminary to politics, and subsidiary thereto, had moved up to first place in his affections. This he never himself stated, and would perhaps scarcely have acknowledged. But the inference from the facts seem strong; and it would be only appropriate if the Bar held the highest place in the regard of one who was for many years considered its chief ornament.

There is another consideration which may have weighed with Clarke in the matter of preferring a legal career, that of money. A political career would have shut him off from the great rewards which his profession now brought him. He had expanded his mode of life as his financial position steadily improved. Shortly before he became

Solicitor-General, he had purchased, in addition to the names of his house at Russell Square, a large house called "The Brigade," which stood in extensive grounds adjacent to the river, at Staines. The upkeep of these two establishments, the education of his children, and the expenditure—including considerable amounts towards the building of Saint Peter's Church at Staines—which came naturally to his lavish and generous nature, made fairly extensive demands upon his purse. That purse, however, was well replenished, for by 1895 Clarke had made over £225,000 in professional fees alone in the course of his practice at the Bar, which in those days of negligible taxation and lower cost of living represented a considerably greater purchasing power than it would to-day. It must be assumed, therefore, that he had more than enough for his family needs; and Clarke was never the man to value money for its own sake. It would thus appear that Clarke must have had a free choice between aspiring to political office and continuing at the Bar, and chose the latter.

On his appointment as Solicitor-General, Clarke received the customary accolade, and applied to the College of Heralds to have arms assigned him. He did not, however, like a famous Law Officer of a previous generation, quarrel with the amount of the fees. His predecessor who did so was Sir Frederick Pollock, Attorney-General, and Clarke recalled his retort to the official who had been sent to persuade him that the charges were reasonable and proper. The official failed in this, and Sir Frederick closed the interview by saying: "You tell the Garter King-at-Arms to go to the Devil sable; in flames gules, with a pitch-fork ardent in his backside proper."

Sir Frederick, remembering that he was of Scotch family, applied to Lyon King-at-Arms and obtained an assignment more cheaply.

Clarke was entertained to a non-political banquet by the proud citizens of Plymouth. He then settled down to the lucrative and honourable but exacting duties of his office. These comprised advising the Government on all matters of Law, conducting cases for the Crown, which might or

the Duke of Marlborough, it also contained the names of Captain Shaw, Chief of the Metropolitan Fire Brigade, Mr. Tom Bird, a well-known surgeon, and General Butler, an eminent soldier. Of these, Clarke's client was the surgeon. The evidence against him was extremely scanty, and Clarke had not much difficulty in disposing of it. His speech to the jury was a good example of his more caustic style: "Mr. Finlay [counsel for Lord Colin] seems to have three canons from which there is no departure. If a man is found alone with a woman, his inference is that adultery has been committed. If a man is accused, and does not attend and deny it, he is guilty of the charge imputed; and if he does attend and deny it, then he is guilty of perjury as well as of the offence of which he was charged. . . . A great point has been made about Doctor Bird falling asleep in Lady Colin's bedroom. It is said Lord Colin found Doctor Bird asleep. Well, I do not think there is much in that to prove improper conduct. Had Lord Colin found him awake the case might perhaps have been stronger. The real truth is that minute trifles, which at one time were considered of no importance, have been raked up and so pieced together by Lord Colin and his counsel that they have been able to present this case, and seek to bring about the conviction and ruin of Doctor Bird. I am sure you will not allow such charges as these to prevail."

The jury in fact did not let the charges prevail against Bird, or any of the other co-respondents. They returned a verdict at nearly ten o'clock at night, acquitting Lady Colin on all charges, and finding that Lord Colin had not committed adultery with Mary Watson. The result of this expensive litigation, therefore, was a stalemate. The fact that none of the charges was made out did not prevent the publication of "a copious report" of the proceedings, with a statement in the preface that "the skeleton of Society is there stripped of its meretricious gloss and glitter, and laid bare to the public gaze in the full horror of its festering hideousness. We are no longer what we were. France, with her peculiarly constructed system of Society,

points the finger of scorn at us. Italy, with the loose social relations induced by her soft and seductive climate, smiles languidly ; and the stern Teutonic nations amongst whom a breach of the marital condition is visited with condign punishment, scowl at us."

But, in spite of French scorn, Teutonic disapproval, and the langour of Italian smiles, divorces among the rich continued in England—it was not then economically possible for a poor man to get a divorce. Among those in which Clarke appeared at about this time was the French-Brewster divorce case, which was heard in 1889. In this case, Mrs. French-Brewster petitioned for a divorce on the grounds of her husband's cruelty, desertion, and adultery, and Mr. French-Brewster counter-petitioned against his wife, alleging adultery on her part with the Honourable H. A. Ormsby-Gore, A.D.C. to Prince Edward of Saxe-Weimar, Commander-in-Chief in Ireland. In those days, and until the Act of 1923 put the sexes on an equal footing in this respect, a wife could not obtain a divorce from her husband on the ground of adultery alone ; it had to be coupled with cruelty or desertion. Clarke appeared for Mr. French-Brewster, while Sir Charles Russell was counsel for the wife, and Lockwood, with Asquith as Junior, for Ormsby-Gore. It is impossible for the ablest counsel to make bricks without straw, and Clarke was given very little straw in this case. Mr. French-Brewster appears to have been somewhat unreasonable, and had accused his wife of misconducting herself with a man at Dieppe, while what she had in fact been doing was laughing at a fat Frenchman bathing. As for Ormsby-Gore, it was his duty to send out invitations on behalf of Prince Edward, who gave evidence that Mrs. French-Brewster had frequently dined with his wife and himself, receiving the invitation from the A.D.C. and replying to him in the ordinary way. He had noticed nothing unusual in the behaviour of Mrs. French-Brewster and Ormsby-Gore. Lord William Seymour, who was Ormsby-Gore's uncle, stated under cross-examination by Clarke that he had told his nephew not to walk in the Park with Mrs. French-Brewster as it

was unfair to her, in view of her relations with her husband, "for a young fellow to be dangling about her." This was not very much to go on, and Russell could adduce evidence of a more serious nature. Servants from an hotel at Eastbourne proved that French-Brewster had joined a party which had included ladies whose manner and conversation were, in the opinion of the porter, not those of ladies. One of these was a milliner and dressmaker who was "tall and very smart, and might be described as a very fine woman" but was unfortunately also "a loose woman." The party was very lively, and drank four bottles of claret at dinner. French-Brewster did not see fit to come and give evidence denying the charges against him, and the jury required only ten minutes to find him guilty of desertion and adultery and to say that there was no foundation for the charges against his wife and Ormsby-Gore. Which goes to show that not even the employment of the most eminent counsel can compensate for having no case.

But the most notable divorce case in which Clarke appeared—and one of the most far-reaching in its consequences that has ever been tried—was that of O'Shea *v.* Parnell. This divorce case was the climax of the Parnell Saga, in the legal aspects of which Clarke had been closely identified. The Parnell divorce case struck down Parnell, and with him the hopes of the Liberal Party, when events had raised him to the summit of his prestige. Most notable of these events was his triumph in his libel action against *The Times* in respect of its articles, "Parnellism and Crime." In this case Clarke received a letter from Mr. Soames asking him to accept the leading brief on behalf of *The Times*. "My clients and I," wrote Mr. Soames, "will be very glad indeed if you will. The case as you know is a very important one to my clients and will involve very heavy work for you, if you undertake it, but Mr. Asquith, who has the facts at his fingers' ends, will be prepared to give his whole time to you." In view of the fact that there was at this time a special Commission sitting to enquire into the charges made by *The Times*, Clarke sought the advice of Lord Salisbury as to whether or not he should

accept the brief thus offered to him. Lord Salisbury replied: "It seems to me that it would not be quite fair to you to interfere with your acceptance of the conduct of an interesting case, which it is well within the traditions of your office to undertake. But I feel much more strongly that it would be clearly unjust to *The Times* to deprive them, on political grounds, of the best assistance they can obtain, when it is quite certain that no such consideration will interpose an obstacle of a similar kind in the way of their opponents. I have therefore no objection to offer to your acceptance of this case." In spite of this permission, Clarke decided to refuse the brief on the dual grounds: first, that as it was not certain what course the Government would wish to pursue when the Commission reported, there was a chance, even if only a remote one, of his professional interests in the matter disabling him from rendering effective service to the Government; and secondly, that his acceptance of it might strengthen the proposal that Law Officers should be forbidden to take private practice.

Clarke therefore took no personal part in this case, which collapsed with the discovery of the Piggott Forgeries. The result was that *The Times* paid to Parnell the agreed sum of £5,000 damages. But the political gains to him were far greater, and Parnell was rapturously cheered in the House of Commons by the enthusiastic Liberals.

And well they might cheer, since Parnell's triumph appeared to open up the prospect of an immediate Liberal victory. But across the pleasant imaginings thus excited lay the shadow of Parnell's relations with Mrs. O'Shea. Whether or not O'Shea refrained from earlier legal action lest any proceedings taken in the lifetime of Mrs. O'Shea's rich aunt Mrs. Wood should restrain that lady from such testamentary beneficence as she might have in mind, is a speculative hypothesis; it is more charitable to assume that he was not earlier aware of the true extent of the relationship between his wife and Parnell. Be that as it may, it was not until after Mrs. Wood had died, leaving £200,000 to Mrs. O'Shea, that O'Shea joined with relations in an attempt to upset the will and instituted proceedings

for divorce. In both these sets of proceedings Clarke was instructed.

The cases were not of interest in regard to what transpired at their hearing, but as the culminating point of the Parnell tragedy and for their political effect. There was one unusual feature in the divorce case, however, in the matter of the solicitors. O'Shea went first to Mr. Soames, the solicitor for *The Times*. In view of Soames's connection with the previous Parnell litigation, however, it was considered better that he should not proceed with the case. Surprisingly enough, he recommended Mr. Day, who was not only of less than a year's standing as a solicitor and a Roman Catholic, but also the son of Mr. Justice Day, who was sitting as one of the Commissioners inquiring into the charges of criminality against Parnell. He it was who instructed Clarke to appear in the matter, and Clarke had the unusual experience of telling his solicitor client that, in all the circumstances, he was not an appropriate person to have the conduct of the case. After some demur, Day acquiesced in Clarke's point of view, and Clarke recommended O'Shea to place the conduct of the case in the hands of Messrs. Wontner, the well-known firm of solicitors who were old and frequent clients of his own. The case was heard in November of 1890, and Clarke appeared for O'Shea. Mrs. O'Shea's legal advisers had pleaded almost every defence known to Divorce Law, including denial of the adultery, connivance of it and conduct conducing to it by O'Shea, adultery by O'Shea, and neglect and cruelty on his part. The adultery alleged was supposed to have taken place between O'Shea and Mrs. Steele, who was his wife's sister. In spite of the brave front put up on the pleadings, Lockwood, who appeared for Mrs. O'Shea, announced on her behalf at the beginning of the case that he would take no part in the proceedings. The truth was that Mrs. O'Shea's relations with the Irish Leader were notorious and easily susceptible of proof. Parnell was not even represented, and so in the event Clarke's task was not very difficult. There was no evidence of the allegation of adultery between O'Shea and Mrs. Steele, which they both denied

on oath, and Mr. Justice Butt said that, even if neglect were proved he would not let it stand between O'Shea and his divorce. The only real issues, therefore, were the adultery of Mrs. O'Shea and Parnell, of which there was overwhelming evidence, and O'Shea's connivance of it, which he had denied and which was not supported by affirmative evidence. On these issues the jury found that Parnell and Mrs. O'Shea had committed adultery, and that there had been no connivance of it. Thus ended what *The Times* described as "a story of dull and ignoble infidelity, untouched so far as can be seen by a single ray of sentiment or a single flash of passion and comparable only to the dreary monotony of French middle-class vice, over which M. Zola's scalpel so lovingly lingers." So O'Shea got his divorce and Parnell went out of public life.

The litigation in respect of Mrs. Wood's will did not come to a head until somewhat later, by which time Parnell had ceased to be of political consequence. The Plaintiff in this Probate action was Mrs. O'Shea, now Mrs. Parnell, who propounded a will made in 1889, when Mrs. Wood was ninety-six. The defendants, who set up an earlier will of 1847, were her brothers, one of whom was Sir Henry Wood, V.C., and numerous other relatives, for some of whom Clarke was briefed. These proceedings were settled without being fought out in Court on the basis that half of the property went to Mrs. Parnell, and half to her brothers: under the resettlement of Mrs. Parnell's property after the divorce, O'Shea received half of her life interest in the property. Although this case was settled without a contest, briefs had already been delivered to Counsel with the result that they became entitled to the fees marked thereon: Clarke's brief was marked with a fee of 600 guineas, the biggest fee earned by him for a single case in the whole six years of his period of office as Solicitor-General. This is a good illustration of the comparative smallness of legal fees in those days, as Counsel of the standing of Sir Edward Clarke would to-day receive many briefs marked in higher figures than that.

Ireland loomed large on Clarke's horizon at this time,

both in Politics and in his professional activities, and the Parnell Cases were not the only litigation in which he was involved arising out of the Irish Troubles. The famous prosecution of Cunninghamham Graham and John Burns in connection with the riots in Trafalgar Square arose from a mass demonstration organised by the Radical Association to protest against the imprisonment of O'Brien, one of the Irish Nationalist M.Ps for Cork. On November 13th, 1887, Trafalgar Square was a seething mass of some fifty or sixty thousand political demonstrators controlled, checked, and generally prevented from doing any substantial harm either to themselves or to anybody else by two thousand Police Constables. In the midst of this tumult appeared the romantic figure of Cunninghamham Graham, at that time a Member of Parliament, waving his hat and directing the crowd for all the world like a revolutionary leader in that South America with which he was so familiar. Burns cut perhaps a slightly less dashing figure as no doubt befitted a future Cabinet Minister in a Liberal Government. The result, however, was the same for both—charges of riot, unlawful assembly, and assaulting the police. The Crown attached considerable importance to the case, as questions concerned with the right of public meetings and the powers of the police were expected to be raised. Consequently, both Webster and Clarke were briefed to go down to the Old Bailey and conduct the prosecution. They contended that there was no legal right of public meeting in Trafalgar Square, which was a public thoroughfare. There was a right of free discussion, so long as there was no obstruction, but this was not the same as the right of free public meeting. They called witnesses to prove obstruction and disorderliness, and Sir Charles Warren, the Commissioner of Police, gave evidence that in his judgment the prohibition of the meeting was absolutely essential to order and peace.

In reply, the Defence called a number of witnesses to speak in a contrary sense of the crowd's demeanour. These were for the most part well-known Liberals and Radicals, including Sir Edward Reed, M.P., and Charles Bradlaugh, M.P., who perhaps thought that there ought not to be a

controversy without him. Another witness described the crowd as a most orderly one, and went on to say that he could not see what had happened to the defendants because "there was a scrimmage going on all round." But the most interesting of the witnesses called for the Defence was Henry Hyndman, the pioneer Socialist leader. He was cross-examined at some length by Clarke as to a previous meeting, which he and Burns had addressed in Trafalgar Square. At this meeting, Burns, red flag in hand, had mounted a pedestal outside the Carlton Club and addressed the crowd, after which the mob had broken the windows of the Club. This, however, was only, he explained, after the members of the Carlton had thrown missiles out at the mob. Questioned by Clarke about the mob which had gone along Pall Mall breaking windows, Hyndman said that this was not their mob, "but Peter's and Kelly's mob, the anti-sugar bounty mob."

"Do you claim that you have some magic spell by which only good people will come to your meetings and the bad go to all others?" asked Clarke.

"There has been no riot in other meetings we have held in the Square," replied Hyndman.

"That," retorted Clarke drily, "is because they have been under police control."

Asquith made a long and eloquent speech on behalf of Cunninghame Graham, which led Burns to compare him to Lord Erskine upholding the rights of the working classes, and Burns followed with a speech chiefly directed to the distress of the unemployed. Clarke did not in this case make a speech because the Attorney-General replied for the Crown. In the result both the defendants were found guilty of unlawful assembly, but not guilty on the other counts.

In the following year Clarke was engaged in a still more important case in which the same Mr. O'Brien was concerned. In this case Clarke's lay client was no less a person than the Prime Minister, whose selection of Clarke for a case in which he was personally involved was a signal mark of confidence. The case arose out of a speech delivered by Lord Salisbury

at a political meeting at Watford in 1889, in which he referred to a speech made by Mr. O'Brien at Ballyneale in Tipperary in the previous September. Lord Salisbury had then said : " Mr. O'Brien in language not so crude as I have used but perfectly distinct, urged upon all those who heard him that the men who took unlet farms should be treated as they had been treated during the last ten years in the locality in which he spoke—that is to say, that they should be murdered, robbed, have their cattle shot and ill-treated, and their farms devastated." This brisk denunciation was construed by O'Brien as meaning that he had incited his audience to murder, pillage, and to the maiming of cattle and he brought an action for slander, claiming £10,000 damages. Clarke was briefed to lead for Lord Salisbury, and the pleadings were shown to him. In these he found it was proposed to rely not on justification of what Lord Salisbury had said, but on a plea of fair comment and privilege arising from Lord Salisbury's position. Clarke considered this to be unwise, and pointed out the adverse effect that such a plea might be expected to exercise upon the jury. To this the solicitor not unreasonably replied that if justification were pleaded, and the jury nevertheless found in favour of O'Brien, the damages would be greatly inflamed. In the end, however, Clarke's view prevailed, and plea of justification was set up, i.e. the Defence undertook to prove the truth of what Lord Salisbury had said. The adoption of this course was, as is almost invariably the case, a risk ; and Clarke had that feeling of especial responsibility which is inseparable from the knowledge that one's own tactics have been adopted against the judgment of others.

The case came to trial at Manchester, where it was expected that an impartial jury could be obtained. The case was opened on July 19th, an unfortunate day for the Defence as it coincided with the receiving by O'Brien's leader, Parnell, of the freedom of the City of Edinburgh. The case was tried before Mr. Justice Stephen, and there was naturally a powerful array of counsel on both sides. Clarke was given a second leader in the person of Ambrose,

Q.C., a Conservative Member of Parliament, and a second junior in addition to Danckwertz, in the person of Lord Robert Cecil, Lord Salisbury's son, who was then at the outset of a distinguished legal as well as a political career. O'Brien admitted that the purport of his speech was to incite to boycott without giving the police a handle against him—any reference to boycotting in a speech in Ireland having been made illegal at that time—but, of course, stoutly denied that there was any incitement to graver acts. He had in fact been sentenced to six months' imprisonment for conspiring to bring about boycotting in this speech—a subsequent sentence to that which had led to the Trafalgar Square Demonstrations and the prosecution of Cunningham Graham and Burns. He was subjected to a long, detailed and rigorous cross-examination by Clarke which occupied nearly all day and filled five columns of *The Times*. The object of the cross-examination was to show that by previous writings and speeches O'Brien had condoned the murder and outrage of "Landgrabbers," and that he must have known from the frequency of previous outrages that fresh outrages would be likely to follow on boycotting sooner or later; this being so, by inciting people to boycott he was, if not directly inciting them to murder, at any rate willing to condone murder. O'Brien's attitude throughout the cross-examination was that the National League, the organisation responsible for boycotting, in support of which he had been speaking, was not a party to the outrages; on the contrary where its policy was effective there had been no outrages. O'Brien, a practised and eloquent speaker, was very ready with his answers, and the cross-examination was a fine duel of wits. Clarke, however, was able to put the outrages to him one by one with great effect: thus "Was not John Regan found shot?" "Was not Edmund Tobin found with his head smashed with stones?" and so on. Many of these outrages O'Brien had to admit, qualifying the admission by saying that they had taken place in districts where the National League was not strong and the policy of boycotting not effective. Clarke followed up this line of attack by putting to O'Brien the charges which he

had made against various English public men such as Earl Spencer and Mr. Balfour, of whom he had said that "his first act in Ireland was a wilful murder."

Clarke had come to Court with over thirty witnesses prepared to give evidence of outrages committed in and about Tipperary. After fourteen of these had given evidence, Gully, Q.C., who led for the plaintiff, ceased to cross-examine them. At this Clarke said that it was not necessary to call the rest, and proceeded to put his case succinctly before the jury. There could be no excuse for O'Brien, who had made an expedition to Tipperary for the purpose of stirring up the people, and he knew, or ought from previous experience to have known, that the result of his speech would probably be outrages. How could it be said that Lord Salisbury's comment had been unfair? And was it not in any case sheer impudence on the part of a man like O'Brien, who had himself made unfounded attacks upon English public men, to come and ask the Court for damages in respect of this criticism upon himself? The jury seemed to agree, for after a long and careful summing-up by Stephen who stressed the importance of doing justice "to an Irishman who says he has suffered a wrong from probably the foremost Englishman of our day"—they required only six minutes to find a verdict for Lord Salisbury.

This satisfactory result was not quite the end of the matter, for O'Brien took it to the Court of Appeal, claiming a new trial on the ground of misdirection of the jury by Stephen. Clarke had to argue in the Court of Appeal against Gully's contention as to this and as to the verdict being against the weight of the evidence. He was completely successful, and the Court of Appeal dismissed the appeal on all grounds. It is interesting to note that Clarke received a letter from Mr. Prescott, the foreman of the jury, in reference to Gully's claim that the case had gone against his client on a technicality. Mr. Prescott denied this, adding, "The jury wished to give a verdict on the one broad issue—is incitement to boycotting virtually the same thing as incitement to violence and murder? and to that question they could with the evidence before them give but one

answer." Lord Salisbury was himself naturally delighted, and wrote to Clarke after the Manchester hearing "to express very great admiration for the skilfulness and eloquence of your speech and also my great obligation to you for your very able conduct of the case." It need hardly be said that, apart from the question of damages, the effect of an adverse verdict against the Prime Minister for the slander of a political opponent would have been most serious. Not only was Lord Salisbury saved from that, but, owing to Clarke's original advice, his victory had been won on the straight issue of whether or not the truth justified him in saying what he did.

Naturally it was only a minority of Clarke's private cases which were concerned with politics. Some were concerned with politicians, but not with politics, as that in which the strange character Hugh Watt, M.P., proceeded for libel against Charles Cameron, M.P., proprietor of the *North British Daily Mail*. In this case Clarke, who appeared for Cameron, won a decisive victory over a team of Counsel, which included Sir Henry James, Q.C., Sir Charles Russell, Q.C., and Finlay, Q.C. Some were of legal importance like that in which he appeared for the Bedford Hotel Company when they were sued by the Marchioness of Huntly in respect of a thousand pounds' worth of jewellery, which had been stolen from her dressing-room in a Brighton hotel. The importance of this case was the decision of the Court of Appeal that a notice in an hotel bedroom, that valuable should be deposited with the manager unless kept under lock and key, does not amount to a special contract that the manager will guarantee all valuables which are kept under lock and key. In the absence of negligence by the manager or his servants, therefore, the hotel guest is left to his remedy under the Innkeepers Act of 1863, which limits the liability of the hotel to £30. The effect of this decision was that Clarke's clients had only to pay £30. Other cases were of sociological interest such as that in which he was briefed to defend the Rector of Stepney in the libel action brought against him by the famous Freethinker, Mrs. Annie Besant, who appeared in person. During these proceedings, the

Rector said that it was grossly immoral to limit the extent of the family to the parents' means. Half-way through, the jury intimated their opinion that the ladies ought to retire, and Baron Huddleston, who tried the case, said that he thought all respectable ladies had already done so. The Judge "in indignant terms expressed his abhorrence" of the means suggested for limiting families: and the jury failed to agree. Which shows that this was a vexed question even in 1889.

Most of his cases, of course, at this as at any other period, were cases of great importance to the parties at the time, and perhaps of some passing general interest, but survive only as names in his fee book. Those that survive as very much more than names do so because of their dramatic content, of the mystery surrounding the facts that gave rise to them, of their political or sociological interest, of the status of the parties involved, or of the tactical skill and forensic brilliance which they evoked. In 1891 Clarke appeared in a case which for all of these reasons has remained green in the public memory.

CHAPTER XII

THE BACCARAT CASE AND A SUPPRESSED VICTORIAN SCANDAL

EXCEPT in the extraneous matter of providing excitement, the great Baccarat Case of 1891 presented few, if any, points of contact with the life of the ordinary citizen. The ordinary citizen had not the felicity of tasting the sumptuous hospitality of Tranby Croft, nor of hobnobbing with the Heir to the Throne ; he did not play baccarat and probably could not even pronounce the word correctly. Nevertheless, the case does in its way mark a social landmark. The social world of Tranby Croft was not the social world of 1880, " that golden age when it was always Lady Somebody's afternoon," as Mr. Guedalla has called it. Equally it was not like that of post-war years, a free-for-all—for all, that is, who can still be found to take an interest in such things. In 1891 the sphere of Society was showing signs of what it became more brazenly in Edwardian times, a no-man's land easily entered with the passport of wealth, and even of brains, if sufficiently tinged with the fashionable Bohemianism. This was the background of the Baccarat Case, a scene where the men of wealth paid the piper and the men of position often called the tune. It was a scene which, however innocent and natural the play that was staged upon it, was more likely to endure if left free from the scrutiny of the outside world. In those days, before the advent of the popular Press, the curtain was rarely rung up on the doings of Society, and when it was, the tendency of a large part of the public was to accord it the simple and unenvious wonder, which is now commanded by the lives of the celebrities of the new world of the screen. Others, however, were inclined to be more critical of the glimpses which were accorded them, and still more censorious of what they felt

must be the worthlessness of that which was not revealed to them. To these the Tranby Croft Case came as welcome confirmation of their worst suspicions with regard to the gambling and other unworthy social habits of those who lived in the *haut monde*. Even those who resisted the temptation either to marvel at Society or to condemn it, were sincerely perturbed at the spectacle of their future Sovereign enlivening his leisure at the baccarat table at Tranby Croft. The excitement attending a *cause célèbre* invested the life as led by the New Society with an enduring, if perhaps somewhat unfair, impression in the mind of the ordinary man.

Such was the social effect of the Baccarat Case. On the personal side it involved the tragedy of the degradation and downfall of a brave soldier with a fine record of service rendered to his Queen and Country on the field of battle. As far as Clarke is concerned, it is the story of a great fight on behalf of a gallant fighter.

Tranby Croft was the property of Mr. Arthur Wilson, a gentleman who had become possessed, as a result of his own exertions as merchant and shipowner, of very considerable means indeed. It was perhaps natural that Mr. Wilson having spent so much of his life in the acquisition of wealth, should not be enthusiastic about heavy gambling, which he no doubt regarded as a method of dissipating rather than increasing it. Equally naturally, perhaps, many of his guests, not all of whom had experienced the same struggle for fortune as himself, were not so averse. Guests were frequent at Tranby Croft, and a large party assembled there for the Doncaster Race Meeting in September of 1890. The principal guest was no less a person than the Prince of Wales; and, in addition to the host and hostess, their twenty-two-year-old son, Arthur Stanley Wilson, their daughter and her husband, Mr. Lycett Green, M.F.H., there were the Earl and Countess of Coventry, the Earl of Craven, Lord Edward Somerset, the Hon. A. Somerset, the Hon. H. Tyrwhitt-Wilson, Lady Brougham and Vaux, General and Mrs. Owen Williams, Mr. Christopher Sykes, Miss Naylor, Mr. Berkeley Levett, a subaltern in the Scots

Guards, and Mr. Reuben Sassoon. There was yet another guest, who was known to the Wilsons only slightly and who was invited at the suggestion of the Prince of Wales, with whom he travelled up to Doncaster on September 8th. This was Sir William Gordon-Cumming, fourth baronet, Lieutenant-Colonel in the Scots Guards, owner of 40,000 acres in Scotland and a house in London besides, member of the Carlton, the Turf, the Marlborough, and the Guards Clubs, with twenty-three years of distinguished army career, including active service in the Zulu War and in Egypt, and twenty years' friendship with the Prince of Wales, behind him. He was also a keen and successful card player.

The party assembled on the evening of September 8th, the day before the race meeting was due to start. After dinner baccarat was suggested. It would have been surprising had this not been suggested, in view of the fact that the Prince of Wales had brought down with him his own set of counters inscribed with the Prince of Wales's feathers. A large proportion of the company, excluding the host but including some members of his family, the Prince of Wales, and Sir William Gordon-Cumming, accordingly sat down to baccarat after dinner. The pastimes of the great, like their schemes, should be in essence simple. Judged by this standard, baccarat is eminently suitable. It is a game so simple that it need not add to the strain on the minds of tired statesmen or business men, or place any undue tax on the less cultivated intellectual resources of those whom Fortune has exempted from the humiliating obligation of making effort on their own behalf. Baccarat was played at Tranby Croft that evening.

It may be explained to the uninitiated that baccarat is played as follows: The banker sits in the middle, and says how much there is in the bank, which represents his maximum loss—this sum being on the occasion in question £100. The players other than the banker are divided into two tableaux, or teams, which sit on either side of the banker. Each tableau is represented by one player, to whom the banker deals one card, and one for himself;

he then repeats this process, all six cards having been dealt face down. The players then look at their own cards. The object of the game is to get cards making a total of eight or nine points. In reckoning the points, tens and court cards do not count, e.g. $10 + 3 = 3$. If anyone obtains a "natural," he declares it. If the dealer has not obtained a "natural," he offers a further card to each of the others, who of course are guided as to the acceptance or refusal of a third card by the total which they have obtained from the other two. The ordinary procedure is never to take a third card with a total of six or five, but probably to do so with a total of four. The two representative players then show their cards, and the banker decides whether he will take a third card or not. In the result the banker pays any tableau whose score is nearer the required eight or nine than his own. It is therefore important for the banker to know the amount staked on each tableau, as he will be guided in his decision whether to take a third card or not by the relative amounts staked on each side; thus, for example, if as the game stands, the side with the larger stake is due to pay him, he will probably prefer not to take a third card and so risk a deterioration of his chances.

On the night of September 8th, the Prince of Wales was banker at Tranby Croft, and the party sat down to play at three tables of uneven height and size which had been put together for the game. No line was marked on the table-cloth to denote exactly where the stakes were to be placed. Sir William Gordon-Cumming, an experienced player of baccarat, was observed to be very successful. Suddenly young Arthur Stanley Wilson thought he observed something more remarkable about Sir William's play. It seemed to him that Sir William had a five-pound stake on a successful coup, and was paid fifteen pounds, i.e. three red counters each representing five pounds. Later, when Lord Edward Somerset received the cards on behalf of the side which included both Arthur Stanley Wilson and Gordon-Cumming, he thought he observed Gordon-Cumming looking to see what cards Lord Edward had got

—which as a member of the same side he was, of course, entitled to do. Then, however, it seemed to him that Gordon-Cumming, seeing that Lord Edward had a “natural,” opened his hand and let three more red counters drop on to the table, for which he was duly paid twenty pounds on the coup. Wilson then turned round and whispered to Levett, who sat next to him: “My God, Berkeley, this is too hot!” Surprised by this unexplained ejaculation, Levett naturally asked him what he meant. Wilson replied: “This man next to me is cheating.” “You must be mistaken,” said Levett. “It is absolutely impossible.” Told to look for himself, he did so and after a few more coups turned to Wilson, agreeing that it was “too hot.” When the evening’s game was over, Wilson went up to Levett’s room, where that puzzled young subaltern threw himself across his bed, saying: “My God! To think of it—Sir William Gordon-Cumming caught cheating at cards! What on earth are we to do?” What Wilson did was to tell the butler to prepare a long pantry table, covered with a green baize cloth with a line round it, for the next night’s play. He then told his mother, and next morning his brother-in-law, Mr. Lycett Green.

Next evening they sat down to play at the new table thus prepared. The Prince of Wales was again banker, and Lady Coventry, next to whom Sir William sat, received the cards for their side. There were now five players whose minds were prepared for the possibility of Gordon-Cumming cheating by increasing his stakes: young Arthur Wilson, Mrs. Arthur Wilson, Berkeley Levett, Mr. Lycett Green, and his wife, to whom he had confided what her brother had told him. In the result only Berkeley Levett said that he did not see Gordon-Cumming cheat upon that evening. Arthur Wilson said that he saw him cheat twice by pushing more counters across the line when apprised of the result; Mrs. Lycett Green said that she saw him cheat on the same two occasions; Mr. Lycett Green said that he saw him cheat twice, only one of the occasions being the same; and Mrs. Arthur Wilson said that she saw him cheat twice, neither occasion being the same as any

of the above. The game continued, however, without any overt reference to their suspicions and the party broke up for the night in the ordinary way.

Next day the whole party went to the races, and the young men took occasion to put their story before Lord Edward Somerset, and to ask for his advice. He advised them to lay the matter before Lord Coventry and General Owen Williams, who were older men. Lord Coventry and General Williams, who had been a close friend of Gordon-Cumming for many years, listened to Lycett Green's story, and, upon the supposition that there were five witnesses against him agreed on the facts, believed Gordon-Cumming to be guilty. They decided that the best thing was to inform the Prince of Wales and to take steps to see that the matter was hushed up. The Prince of Wales was duly informed, and at about eight o'clock that evening Lord Coventry and General Williams came to Gordon-Cumming's room while he was dressing for dinner, and told him of the accusation. He said that it was a foul and abominable falsehood, and asked to see the Prince. He saw him at eleven that evening, denied the truth of the charge, and said that he wished to insult his accusers on the first public place he would meet them, that was on the racecourse next day. The Prince dissuaded him, saying: "What can you do? There are five accusers against you." After this interview a document was prepared by Lord Coventry and General Owen Williams, at Mr. Lycett Green's request, embodying an undertaking on the part of Gordon-Cumming never to play cards again. It ran: "In consideration of the promise made by the gentlemen whose names are subscribed to preserve silence with reference to an accusation which has been made with regard to my conduct at baccarat on the night of Monday and Tuesday, September 8th and 9th, 1890, at Tranby Croft, I will on my part solemnly undertake never to play cards again as long as I live." Beneath were written the names of all the men (but not the ladies) staying at Tranby Croft at that time. Late that night Lord Coventry and General Williams brought the document to Gordon-Cumming, impressing upon him

the importance of silence in order to avoid scandal. Gordon-Cumming looked at it and pointed out that it would be tantamount to an admission of guilt. They admitted this, and on Gordon-Cumming asking them if they still recommended him to sign it, replied that they did. Thereupon he signed it, pointing out that it would be impossible to keep the matter secret, as it was well known that he played cards a great deal and this undertaking would prevent him from participating even in sixpenny or shilling rubbers at the Barracks. Early next day he left Tranby Croft.

Gordon-Cumming showed himself a wiser prophet than the rest, for, apart from the curiosity likely to be excited by his abstention from cards, women were in the secret and none of them were parties to the undertaking as to silence. How the secret was revealed is not certain, but next day a lady at Doncaster Races, who was not a member of the house party, was aware of it. It was decided by Lord Coventry and General Williams that a précis of the events should be drawn up as a safeguard. This was done three or four days after the Tranby Croft house party broke up, and the draft was sent to the Prince for his approval. The Prince then sealed up the précis and Gordon-Cumming's undertaking, and handed them over to his private secretary for safe keeping. Meanwhile, through the autumn the rumour as to Gordon-Cumming, starting as a whisper in corners, assumed ever bolder and more significant proportions. In December he received an anonymous letter from Paris referring to the occurrence; by the end of January the matter had become virtually public property. On January 25th, 1891, Gordon-Cumming went to his commanding officer and laid the whole story before him. Ten days later, through his solicitors, Messrs. Wontner, he issued a writ for slander.

Messrs. Wontner briefed that able and experienced junior Charles Gill, and in due course instructed Clarke to lead him in the trial. The defence put up a plea of justification; that is to say, they said that the Wilsons, the Lycett Greens and Berkeley Levett, whom Gordon-Cumming was suing,

had been entitled to say that he was cheating since that had in fact been the case. Clarke and Gill had many anxious consultations as to the case. There were several awkward obstacles to surmount if it was to be won. Why had Gordon-Cumming signed the undertaking if he was innocent? Why should these people, who were not, it is true, close friends, but had certainly no reason to injure him, make so serious an accusation against him if it was untrue? The answer to the first question, according to Gordon-Cumming, was that he had put himself in the hands of his old friends, Lord Coventry and General Williams, and was very anxious to hush up any possible scandal which might involve the Prince of Wales. As for the second point, the reason must not be sought in any malice on the part of the defendants, but in the fact that they had failed to understand the system which he was following. This system was to stake £5 on the first *coup*. If this *coup* was successful he would stake on the next *coup* the £5 which he had won plus the original stake of £5 plus a sum equal to the original stakes, i.e. a further £5. Thus the total on the second *coup* would be £15. The system did not, however, apply to the third *coup*, on which he reverted to the original stake of £5. Further, it sometimes happens in baccarat that, if there is considerably more staked on one tableau than the other, the banker asks somebody to make up the stake on the smaller one. Gordon-Cumming explained that he had several times done this at Tranby Croft at the request of the Prince of Wales, and had several times won £20 or £25 in this way on the nights in question. It was true, therefore, that his winnings had in fact varied between £5, £15, £20, and £25. It was also true that he had had two very successful nights' play, making £225 in all. These two facts might conceivably have led people inexperienced in baccarat to suppose that there was cheating in the manner suggested. Clarke came to the conclusion that it was a case of honest mistake on behalf of the defendants. It followed that, if they would apologise and withdraw their accusations, the best outcome of the case was a settlement out of Court. That others took this view

can be seen from a letter sent by Gordon-Cumming to Clarke in May of 1891:—

“ Birdssall House,
York.

May 17th.

Dear Sir Edward,

Some ten days ago a great friend of mine, into whose hands I put the affair immediately on hearing that the occurrence at Tranby Croft was known to the world, wrote to me asking me to authorise him to see whether some sort of arrangement could not be come to by which I should be allowed at once to retire from the Army, and that by some means—satisfactory to myself—the case should be prevented coming into Court.

I replied that he had my permission to do so, subject, of course, to my approval of whatever steps were taken or decision arrived at. No satisfactory conclusion could be arrived at, and I at once begged that all further attempts should cease, as I was determined to leave the matter unreservedly in your hands and those of my other legal advisers.

I have now declined even to discuss the matter further, and though I have frequently been approached by friends on the subject of private arbitration, I have refused to listen to any such suggestion.

I can only reiterate my assurance of the perfect confidence I repose, not only in our ability, but your wish to carry me successfully through this painful case, and to beg you to let it be thoroughly understood that I neither at any time had—or have I now—the slightest intention of withdrawing from the action.

Believe me to be,

Yours very faithfully,

W. GORDON-CUMMING.”

All attempts at settlement failed, and both sides prepared themselves for battle. The interest taken in the case, especially by the fashionable world, was unprecedented.

And was there not everything to draw their interest? The Prince of Wales was to give evidence; titles were two a penny; and the issue was pleasantly simple—was a brave soldier who had fought for his country in several tight places to be branded as a cheat and cast into that outer darkness which knew not Society? For those to whom all this was not enough—if there was anybody to whom it was not enough—there was the added attraction of another spectacular contest between the two forensic top-liners of the day, Sir Edward Clarke and Sir Charles Russell. Later on in the proceedings, Lord Chief Justice Coleridge, who tried the case, attempted to silence the applause which greeted the conclusion of Clarke's speech with the angry observation that it was not a theatre. It may not have been a theatre, but the rows of fashionable ladies, for whom half the gallery had been reserved, gave it the appearance of one; and certainly everybody seemed to be agreed that a very good show was going to be put on.

It may be mentioned that Clarke in this case had two hundred guineas on his brief and a refresher of fifty guineas a day. This was a good fee for a leader in those days, but would be considered small for such a counsel in such a case to-day. Of course, it may well be that Sir Charles Russell, who was leader of a string of five counsel, including another Silk in the person of Mr. Asquith, had a larger fee than Clarke's.

When Clarke opened the case on June 1st to a densely-crowded and expectant Court, which included the Prince of Wales sitting in a special seat between the Judge and the witness-box, he still cherished the hope that the matter need not be fought out to its bitter end. His policy, therefore, was to make his opening speech in terms of studied moderation so as to invite the Defendants to accept Gordon-Cumming's denial and withdraw. He dealt with the document which Gordon-Cumming had signed, and suggested that, so far from proving his guilt it did the exact opposite; the Prince, General Williams, and Lord Coventry, could not have believed him guilty because, if they did it would have been the duty of the Prince and General

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Williams, according to Army Regulations, to see that the facts were laid before the Commanding Officer of his Regiment, and it would equally have been the duty of all three, including Lord Coventry, who was a member of the same clubs as Gordon-Cumming, to see that he did not meet the other members of those clubs on equal terms of honour. This was a courageous point to take, for, if the Prince had believed him guilty, there was clearly an implied criticism of his conduct. But, in Clarke's submission, a guilty man would never have signed that document, but would have preferred to bluff it out; it was only because Gordon-Cumming was innocent that he had been willing to sign the document and thus sacrifice himself for the sake of avoiding scandal. The Defendants had quite honestly thought him guilty because they had failed to understand the system which he was pursuing; it was incredible that a man should cheat by dishonestly increasing his stake at the moment at which the attention of the banker and the company was necessarily concentrated on the amounts at stake. This being so, Clarke invited the Defendants to consider the position and put to themselves the question whether they might not have made a mistake and now be willing to withdraw. He ended with an appeal to the jury: "I am here to defend a soldier's honour and to satisfy you that the accusation was due to a mistake, though honestly made. If the accusation is upheld it will be the end of Sir William Gordon-Cumming's career of honour and public service, but I trust that he may go from Court after your verdict back to a life of honour and repute and that, as he has risked his life for you and yours in times gone by, he may in his hour of peril here find protection in your instincts of justice."

At the end of Clarke's opening speech Russell made no conciliatory move. Clarke therefore examined Gordon-Cumming as to his story and version of the events. At the conclusion of his examination-in-chief Russell still made no move to accept the denial, but instead rose to cross-examine. His cross-examination lasted for a day in all, and was conducted with his characteristic vigour. In result it was

THE PLAINTIFF. (SIR W. GORDON-CUMMING)
UNDER CROSS EXAMINATION.

SIR EDWARD CLARKE
ADDRESSING THE JURY.



ON THE RIGHT OF THE LORD CHIEF JUSTICE.

BACCARAT IN MINATURE BY
SIR C. RUSSELL.

(The Baccarat case: Sketches in the Queen's Bench.)

indecisive, but Russell had several strong points of attack, notably as to why he had not emphatically asked to be confronted with his accusers, and why he had signed the document :

" Did you think that in signing that paper you were doing a dishonouring act or not ? "

" I felt I was doing a foolish one."

" Sir William Gordon-Cumming, why did you as an innocent man sign that paper ? "

" Because it was put to me by those two old friends of mine on whom I placed implicit reliance that I had no chance of clearing myself against five witnesses. I was told that a horrible scandal would follow, in which my name, my regiment, and everything would suffer unless I signed that paper."

" Do you think that your friends were honestly advising you ? "

" I think that nothing could have been worse than the advice they gave me, and nothing could have been more unwise than my following it."

There was also considerable cross-examination eliciting the facts that up to a week before issuing the writ Gordon-Cumming's whole preoccupation had been to get out of the Army on half-pay, if he could induce his accusers to soften down the accusation against him by admitting the possibility of mistake ;. and that he had only gone to his Commanding Officer and decided to bring action, when these efforts had failed and he realised that the truth was already known in Society.

Clarke's only other witnesses were few, but exalted, being the Prince of Wales and General Williams. It will be realised from the course of the narrative that neither of these two could give very whole-hearted evidence in support of the Plaintiff. The Prince, however, said that he himself had seen nothing of the alleged malpractices but that the charges appeared so unanimous that no other course was open to him than believe them. General Williams had also reluctantly to say that he believed the charge at the time it was made.

It then became the business of Plaintiff's counsel to try and show by cross-examination of the Defendants that they had been mistaken in their charges. The tactics pursued in regard to them all were the same. All the Defendants, except Mrs. Arthur Wilson, were young, and all were inexperienced in baccarat. They had all dined well, and drinking and smoking were going on throughout the evening. Further, on the second night they were on the look-out for irregularities in Gordon-Cumming's play. Was it not possible that this combination of circumstances had contributed to a mistaken interpretation of Gordon Cumming's system of increasing his stake? With regard to Arthur Stanley Wilson, whom Clarke cross-examined first, it was not difficult to show that his qualifications for forming a judgment were not particularly high—though they must have subsequently become so as he later helped to guide the National destinies as a member of the Legislature. At this time, he had been down from Cambridge for two years, during one month of which he had worked in his father's business. He had only stayed at Cambridge for a year as he had thought it rather a waste of time; and his father had thought so too. The cleverest cross-examination belonged not to Clarke but to Mr. Gill. This was the cross-examination of Mr. Lycett Green, who had stated that his first impulse had been to jump up and expose Gordon-Cumming, but the thought of the horrible scene that would ensue had caused him to write a note to his mother-in-law and continue playing instead. Mr. Gill directed his efforts to making the witness appear foolish by insinuating (1) that he knew nothing about baccarat; (2) that he went there prepared to see cheating; (3) that he did not really know what he did see; (4) that he was in an excited condition and (5) that he had conferred us to the charges with the rest of the family when the action was brought. So cleverly did Mr. Gill insinuate his points that he did not himself make them directly but left the witness to put the idea into words with an indignant question—"You mean that I . . . ?"

But despite the achievements in technique of Clarke and his junior, the Defendants adhered to their statements that

they had seen Gordon-Cumming cheat. This gave Russell a good foundation for his speech, which he strengthened by pointing out the inconsistency of Gordon-Cumming's attitude with his innocence. Had he been innocent, he would have asked for details of the charge and have demanded to be faced with his accusers ; he would then most certainly have explained the system which they did not understand. It would not have occurred to an innocent man to think how best the charge could be kept from the world, but how his innocence could be proclaimed so as to satisfy his three old friends who then believed him guilty. Russell was batting on a fairly easy wicket, for up to the end of his speech Lord Coleridge was in no doubt that the case would result in a verdict for the Defendants. It was left to Clarke in his final speech to try to reverse the trend of the case and capture a verdict from the jury. It so happened that the speech, made in circumstances calculated to evoke all his fighting powers of oratory, was one of the best he ever made. Of such a speech as that, he himself has said : " It is an intense enjoyment to the speaker and I never felt its delight so fully as when I was delivering that closing speech." The tone of this closing speech was markedly different from that which he had adopted in his opening. Then he had been offering the olive branch : now he had thrown down the gage of battle. His opening sentence left no doubt that no consideration of persons or prejudice would stand in the way of his fight for his client. " I am spoken of in this Court by an official title which it is the great honour of my life to have been allowed to bear, but in this case I am not Solicitor-General. I am a private English barrister, bound by the obligations of the robes he wears to disregard private friendships, political associations, and personal interests, in the discharge of his duty towards his clients. . . . I shall speak freely of even the most illustrious of my fellow subjects."

He was as good as his word : " I do not, in view of the statements you have heard from Lord Coventry and General Williams, continue to suggest that they must have believed in the plaintiff's innocence ; but if your verdict is in his favour, I think it impossible that Sir William Gordon-

Cumming's name should be removed from the Army List while the names of Field-Marshal the Prince of Wales and Major-General Owen Williams are allowed to remain there." His case was not that the Wilson family had committed perjury ; but he pointed out that their testimony was not cumulative, because in only one or two instances at most, was the same incident seen by more than one person. Besides everybody except young Arthur Wilson who saw foul play, had been led by information to expect it. On the second night those five people had sat down, with the excitement of Leger Day behind them, after a late dinner,* attended by all the generous hospitality of Tranby Croft and " the pleasant matter floating in their minds that there had been cheating at baccarat at their house last night, and that there probably will be to-night and we shall find it out. Are those the circumstances that will make you ready to accept the random recollections of youthful and inexperienced persons ? "

Clarke then turned his attention to the Defendants, and delivered a scathing attack on them and their methods, starting with " these two young men going up to the room of one of them to discuss their great secret—' Dear old chappie, what is to be done ? ' Arthur Wilson does not go, as might be expected, to his father. They prefer to tell Mrs. Wilson, and then determine to seek an experienced counsellor, a man of the ripe age of thirty-one, whose capacity is that of a Master of Hounds who hunts four days a week. He then tells his wife. Why should he tell his wife ? He had no sort of right to tell her ; but they had the most charming family party ever known—five of them all agog to know whether or not Sir William Gordon-Cumming will cheat the following night. And now Mrs. Wilson has the audacity to say that she sat down at the table and forgot all about it. . . . Mr. Lycett Green said that he was going to watch and if they found him cheating they would denounce him. Quite right. To save up an accusation . . . that is not the conduct of an honourable man ; but Mr. Lycett Green is a Master of Hounds, and hunts four days a week.

* It was very unusual in those days to dine as late as eight in the evening.

. . . The moment he heard His Royal Highness say that about putting the stake in a more conspicuous place his loyal heart was satisfied there was something wrong. He jumped up from the table full of valiant resolution—this Master of Hounds—and changed his mind. He went away—and wrote to his mother-in-law ! ”

Reference to Lord Coventry and General Williams brought him to his peroration, the theme of which was loyalty and sacrifice : “ If they are to have the credit that they doomed their old friend to a life of misery and suspicion out of loyalty to their Prince, at least let Sir William Gordon-Cumming have credit, too, that while protesting his innocence he signed that paper to serve the Prince. Was there no loyalty to the Prince of Wales in the man who sacrificed himself, as his old friends were willing to sacrifice him, in order to save the reputation of one whose kindness during those years, whatever may happen here, will always be a recollection he is entitled to remember with pride ? ”

The applause which greeted this speech, though in part no doubt a tribute to its eloquence and power, seemed to show that, whatever the view of Society, Gordon-Cumming had won some measure of popular sympathy. The Judge, however, was not won over. Remarking that it would be as well for a night to elapse between Clarke’s speech and his summing-up, he adjourned until the following day. He made good use of the interval in preparing a summing-up designed to rehabilitate the Defendants after Clarke’s attack upon them, and to put a different emphasis on the probabilities of the case. Of this summing-up Clarke himself has said : “ It has often been a subject of discussion among lawyers whether Charles Russell or John Duke Coleridge was the greater advocate. I am not sure that Russell was quite at his best in the Baccarat Case, but so far as that case was concerned I think no careful student of the trial would deny the supremacy to Coleridge.”

In the result the jury were absent only thirteen minutes before finding a verdict in favour of the Defendants—a verdict which was a tremendous disappointment to Clarke and a sentence of perpetual social ostracism on Gordon-



The Board of Base: Sketches of the second day's hearing.

Cumming, who at once retired to his estates in Scotland, and remained there until his death some forty years later. Clarke made efforts to see whether something further could not be done on his behalf, but they were unavailing. In August of that year Gordon-Cumming, in answer to a letter of Clarke's about these efforts, wrote as follows :—

“ Applecross,
Loch Carron,
Ross-shire.

Dear Sir Edward,

Your letter of 25th forwarded here.

Many thanks for your renewed efforts on my behalf. No, I think the feeling of a very large portion of the world is strongly in my favour: and notwithstanding the intense horror and disgust I feel on looking back at the time I spent, and what I went through during the first six months of this year, I am yet anxious that no stone be left unturned to justify me in the eyes of the right-thinking portion of humanity. I know the result was a cruel disappointment to you and Mr. Gill. Should we have been wiser to have fought the case out on a more *vicious* system? And did not Lewis and Sir C. Russell partially accept the olive branch tendered, and then round on us half-way through? Anyway I feel sure it was from no lack of good will and effort on your part that the day went against us.

I hope if in Scotland this or any other year you will favour me with a visit.

Yours very truly,
W. GORDON-CUMMING.”

It is somewhat remarkable, though susceptible of more than one explanation, that the handwriting of this letter is distinctly different from that of the one written before the verdict and quoted above. Whereas the other is firm and legible, this letter is sprawling and difficult to read—almost the handwriting of a different man.

The merits of the Tranby Croft case have been much canvassed with the passage of years. The view of Society at the time was to the general effect that Gordon-Cumming

was guilty of cheating, and the Duke of Portland has expressed himself unreservedly in this sense in his Memoirs.

In the face of all this opinion Clarke's belief in the innocence of his man never wavered, and he remained as convinced of it to the day of his death as he had been in that exciting summer of 1891.

An interesting footnote to this case is to be found in a letter written by Lord Coventry to a friend thirty-five years later: "I am greatly touched at the kind remembrances not only of the Lord Chancellor but also of the kind words of so many of my friends; and especially of Sir Edward Clarke, who once had to cross-examine me in a sad case, in which I was most unfortunately a witness of a scene at a Baccarat table—a game in which I took part for the *first and only time in my life*. But we afterwards resumed our friendship which was a great satisfaction to me."

The Baccarat Case remains in the public memory as the outstanding social scandal of the late Victorian era. What is not known is that within a month there nearly came another scandal by comparison with which the Baccarat Case would have seemed almost tepid. That this second scandal never became public was due in no small measure to Edward Clarke. From his papers the authors have been able to piece together the story, but even after the lapse of nearly fifty years have considered it advisable to omit the names of the principal parties.

In July of 1891 Clarke received a letter written by a lady who was married to a very famous personality of the day. These two were among the brightest ornaments adorning the inner circle of Society. In July of 1891, however, Lord B. was out of England and therefore it was Lady B. who wrote to Clarke for his opinion. The story was as follows:—
Some years previously one of the reigning beauties of the day, famous for her vivacious intelligence and her friendship with the Prince of Wales, had been Lord B.'s mistress. This lady had written a passionate and compromising letter to Lord B., which fell by accident into the hands of his wife. Lady B., who seemed to find forgiveness easier in the case of her husband than of her temporary supplanter, asked her

solicitor to write to Lady X., as we must call the fashionable beauty, to inform her of the fate of the letter. On this Lady X. asked the Prince of Wales to go to Lady B. and order her to give up the letter. The Prince did so, but Lady B. refused even so courtly a request, whereupon the Prince, though he had no personal quarrel with Lady B., ceased to speak to her. The position became such that Lady B. had to refuse to go into Society, and she wrote to her husband, as did certain of his friends, to inform him of the situation. Lord B. was so incensed at what he considered to be the social boycotting of his wife that he sent her a letter addressed to the Prince of Wales to be left at Marlborough House.

Fortunately, before the letter was delivered at Marlborough House, Lady B. sought Clarke's advice. The first point on which she wanted his opinion was as to whether it was open to Lord B. to prosecute the solicitor for breach of trust in showing a private letter entrusted to him to another person. To this, of course, the answer was that a solicitor could not be criminally prosecuted for breach of trust in such circumstances, but that a civil action could be brought against him. This was not, however, the main point for consideration, which was the position of the Prince and the wisdom of Lord B. in taking a strong attitude with regard to it. The letter which it was proposed to send recalled the circumstances and stated that if there was not a prompt and satisfactory answer promising that there should be no more social boycotting of Lady B., he would come back to England and expose the whole matter. There was also some suggestion that Lord B. would turn Radical, "as revolutions have been caused by less." The better to apprise him of the whole position, Clarke was sent a document, setting out the whole story with altered names. His opinion was prompt and definite: "I have carefully read and considered the narrative which was sent me this afternoon and which I return, and I take it as accurately stating facts although the names are changed. And I have, of course, reconsidered the letter which Lord B. has sent home for delivery to the Prince of Wales. I repeat my earnest hope

that that letter will never be delivered. For I have a clear and strong opinion upon three points. (1) The Prince of Wales acted rightly in going to the solicitor as a friend of the lady and asking to see the letter. Any gentleman might and ought to act for a lady who in such circumstances applied to him for advice and help. I do not think the solicitor committed any breach of duty or of trust in showing the letter. (2) I think that Lord B. would be generally and rightly condemned if for whatever reason he were to make public the fact that Lady X. was formerly his mistress. You or some friends of yours may interfere but your husband appears to me to be the one person who is bound to silence. (3) The threat which Lord B. made to the Prince of Wales was not justified by the circumstances and necessarily prevented the Prince from receiving you at Marlborough House. No gentleman could receive a lady at his house under a threat from her husband that he would be denounced if he did not. I should be extremely sorry if Lord B. were to destroy his public career by bringing about a great social scandal with no possible advantage to you. I am firmly persuaded that the public judgment would be in favour of the Prince of Wales and against Lord B. You will I am sure understand that I speak very plainly because I look upon the matter as extremely serious. I cannot undertake to advise further ; if you act at all it should be through some relative, not your husband, who could make a strong but quiet protest against the way in which you have been treated."

Lady B. was not too pleased with the advice given. This was not unnatural, as people who ask for advice, when they are themselves strongly predisposed to a certain course of conduct, are generally displeased if the recommendation does not square with that to which they are inclined. But there can be no doubt that Clarke, approaching the matter with a cool head and vast reserves of experience, tendered the correct advice. There can be no doubt as to the serious intention of Lord and Lady B. to make the matter public unless the Prince revised his attitude ; and this, as Clarke pointed out, the Prince could not do. It had all the

appearance of a very ugly, if unnecessary, impasse. The public advertisement of the connection of the Prince of Wales with a matter so far removed from the constitutional preoccupations of Royalty, coming immediately after the Baccarat Case, in which the revelation of the Prince's habits had gravely shocked a numerous proportion of his future subjects, would have been fraught with peril to the future of Monarchy in this country. The opinion counselled moderation, and moderation prevailed. The episode remained in the shadows, and the peril to kingship passed over.

CHAPTER XIII

RELEASE FROM OFFICE AND A QUESTION OF PRINCIPLE

BY the summer of 1891 the life of Lord Salisbury's administration and with it Clarke's period as Solicitor-General was within measurable distance of its natural end. In those days the statutory length of a Parliament's lifetime was seven years : but, in the same way that the five-yearly lease of life of Parliament of the present day normally means four-yearly elections, the ordinary maximum length of a Parliament was six years. The dissolution and General Election could not be delayed beyond 1892. At one time it had looked as if the Parliament would not endure for its natural term. A few months after Lord Salisbury's assumption of office in the autumn of 1886, Lord Randolph Churchill, who as a result of the compromise of 1884 was leading the House of Commons instead of Sir Stafford Northcote and occupying the position of Chancellor of the Exchequer, suddenly demanded the exclusion of the two most prominent surviving members of what he had termed " the old gang," W. H. Smith and Lord George Hamilton, with the alternative of his own resignation. Faced with this ultimatum from the most powerful man in the Conservative Party, Lord Salisbury did not hesitate. Lord Randolph's resignation was accepted, and the Government rocked perilously. Goschen—" I had forgotten Goschen "—was appointed Chancellor of the Exchequer, and the crisis passed. The Conservative Party lost much by the withdrawal of Lord Randolph Churchill in the realms of political philosophy and strategy, but in actual financial administration Goschen was undoubtedly his superior. The consequence was that a period of prosperity was utilised to reduce taxation and the National Debt simultaneously with the strengthening of the armed forces of the Crown. Considerable progress was made in domestic policy, including

the institution of free education, and it was a time agreeably free from foreign complications. Indeed, but for the curse of Irish politics, the administration might reasonably have been remembered as one of the most successful periods in British Government. Unfortunately, Liberals and Conservatives in the late nineteenth century were generally matched fairly evenly, and the balance was held by Irish Nationalists, who were, of course, interested only in Irish affairs and determined to obstruct the course of English legislation.

The Election of 1892 put the Irish element in the ascendant. In the English constituencies the Conservatives had a majority of seventy-one; but the support of the Irish Nationalists gave Gladstone a majority of thirty-nine. Clarke was among those who held his seat for the Conservatives, though a local issue as to the wages of shipwrights made his contest at Plymouth harder than it would otherwise have been. Mr. Gladstone's narrow majority entitled him to form a government and Clarke's tenure of the office of Solicitor-General came to an end. It had been a period rich not only in interest but in financial reward. The six years of office gave him an average income over that period of £17,000, while in the last year, 1892, after the Tranby Croft Case, his legal income amounted to £22,331. Of this figure of £17,000, £6,000 was accounted for by his official salary as Solicitor-General, £3,000 on the average was earned from Government cases, and the rest came from his private practice. His place as Solicitor-General was taken by Sir John Rigby, and his opponent in so many battles, Sir Charles Russell, became Attorney-General. Mr. Gladstone was anxious to alter the prevailing practice, by which the Law Officers of the Crown were allowed to accept briefs from private clients. He informed Russell and Rigby that he understood that the Conservative Law Officers in the previous Administration had foresworn private practice and that they would be expected to do the same. Sir Charles Russell, bent on finding out whether this had indeed been the case—and he must have been greatly surprised to hear it in view of the number of cases between private

parties in which he had been opposed by Clarke in the preceding six years—wrote to Halsbury, Webster and Clarke. His letter to Clarke ran :—

“ My dear Clarke,

Mr. G. in appointing his Law Officers finds he is confronted with a rule laid down by the late Government against the Law Officer taking (with certain exceptions)* any private practice. Pray let me know your understanding of that rule. I envy your freedom.

Yours faithfully,

C. RUSSELL.”

Like Halsbury and Webster, Clarke replied that there was no such rule, and amplified his point of view in his reply to Russell :—

“ Thorncote,

Staines,

Middlesex.

August 20th, 1892.

My dear Russell,

No such rule as you mention was laid down by the late Government. Webster and I were not subject to any restrictions whatever in the matter of private business ; nor should I have submitted to any. I think it is a pity that you and Rigby have consented to take office on other terms, but I look on this consent as simply a matter of personal arrangement between yourselves and Mr. G. and not establishing any rule by which others will be bound.

Very faithfully yours,

EDWARD CLARKE.”

This information did not avail Russell, for in spite of his representations and those of the Lord Chancellor, the Liberal Cabinet remained firm. As a matter of fact, ineligibility for private practice did not harm Russell financially, as his average income for the two years in which he was Attorney-General was rather higher than the figure

* These exceptions comprised private practice in the House of Lords and before the Judicial Committee of the Privy Council.

of £14,000 to which it had risen in 1891. Upon Clarke the incident was destined to have consequences considerably more important before very long.

Meanwhile, however, Clarke found certain compensations in his release from office. His position as Solicitor-General had been somewhat that of handy-man to the Government. He had been expected to be in constant attendance at the debates in the House of Commons so that he could render assistance to any Minister who was too severely harassed by the Opposition. With the Conservative Party in Opposition this duty no longer devolved upon him, and he could expect an easier time. The combination of legal practice with official and parliamentary duties had left singularly little time for domestic life or relaxation. Consequently, he celebrated his release from official ties in August of 1892 by a period of indulgence with his family at Thorncote in his favourite pastimes of boating and tennis, followed by a trip to Ireland. In going there he was actuated in part by a desire to see something at first hand of the country whose fortunes occupied so large a proportion of the time of the House of Commons. It was not, however, a political visit, and he took with him Lady Clarke, his elder son Percival, and his daughter Ethel. From this trip he came back with the conviction that, though Parnellism only commanded the allegiance of a minority of the Irish people, the superior tactical skill and showmanship of its devotees would carry the day for them.

Back in the House of Commons, Clarke took his position on the Opposition Front Bench. Here in some respects he was more fortunately placed than he had been when in office. This was due to the fact that as Solicitor-General he had had an Office in the Government, but not Cabinet rank. The inevitable result of this was that he could not be in the inmost counsels of the Party, for he was naturally excluded from participation in Cabinet secrets. But when the Conservative Party went into Opposition this barrier was removed, and he became a member of the inner hierarchy which determined the strategy of the Opposition. His quick powers in debate were of great use to the Party, and

advantage was frequently taken of them. The most notable occasion was when he was asked by Mr. Balfour to reply to Mr. Gladstone's speech in introducing the Home Rule Bill in the House of Commons. There were many people anxious to speak on the second and subsequent days of the debate, by which time they would have had an opportunity of considering Mr. Gladstone's proposals in detail, but the difficulty of the Conservative Party was to find somebody who could rise as soon as Mr. Gladstone had finished and make an effective debating reply to his speech. For this it was thought that Clarke was ideally fitted by reason of his long experience of extempore reply to the speeches of opponents in the Law Courts. He gladly accepted the opportunity, and, with characteristic thoroughness and industry, went down with his wife to Brighton for three days' careful preparation of his speech. Not knowing precisely what line Mr. Gladstone would take, he anticipated the alternative methods of approach to the problems, and drafted replies accordingly. The occasion is historic in Parliamentary history because it was Mr. Gladstone's last great speech in the House of Commons, which he had dominated so long. His performance, three hours of close reasoning and passionate rhetoric, delivered with form still erect, hawk-like keenness of eye undimmed, and resonance of voice unimpaired, was stupendous in a veteran of eighty-four. To follow such a man on such an occasion was a task of extraordinary difficulty. The enormous enthusiasm which greeted Mr. Gladstone's speech was followed by a prompt exodus from the House on the part of Liberals and Irishmen, desirous of discussing the speech and its effect, and though the Conservative Members loyally remained in their places it looked as if Clarke would have the depressing task of addressing an emptying House. In a long lifetime of speeches delivered in Parliament, in Court, and on every variety of occasion in the country, Clarke found nothing which taxed his powers or his nerves so high as the opening of that speech in reply to Mr. Gladstone. He started by a tribute to Mr. Gladstone's speech, and then good fortune intervened to save him. He pointed out that Mr. Gladstone

had omitted all reference to the Land Question in his speech. The omission was unintentional, and Gladstone rose quickly to supply the deficiency. Such at this date was the magnetism of Gladstone's personality that the news that he was again on his feet brought the Members rushing back to the Chamber. This time they stayed, and Clarke made his speech to a crowded House. This speech, which lasted just over an hour, was Clarke's most striking performance in the House of Commons, and received a great reception. It has been accorded high praise from so exacting a critic as Lord Curzon of Kedleston, and Webster passed considered judgment on it as "one of the most magnificent efforts I ever listened to."

The Second Home Rule Bill passed the House of Commons, but received its expected and decisive quietus at the hands of the House of Lords. This rejection did not bring about the resignation of the Liberal Government, but it terminated Mr. Gladstone's last Premiership, for he quitted Office in 1894 to be succeeded by Lord Rosebery. There were other measures in this Parliament, which Clarke was active in opposing, none of which had the dramatic quality of the Home Rule debate and few of which have any interest to-day. Meanwhile he had, of course, again resumed practice as a private member of the Bar. His clerk was anxious that he should relax the rule which he had made as Solicitor-General not to undertake cases for a fee of less than 100 guineas. Clarke, however, satisfied with the way in which the rule had worked and not greatly caring if his income was somewhat reduced, decided to continue it. The clerk's fears were ill-founded, as for the next three years Clarke's legal earnings averaged nearly £16,000 a year, before moving up to a higher figure. It would not have been possible to discharge so lucrative a practice without a stipulation as to minimum fees, which he in fact continued for the rest of his forensic career. This restriction applied only to the ordinary run of practice, and neither at this nor at any other time did it prevent Clarke from undertaking cases at a nominal fee or no fee at all, when he thought it proper to do so.

In the summer of 1893 Clarke appeared in two libel actions against Mr. Labouchere and *Truth*. In the first of these his client was Sir William Worsley, jovial Tory squire of Hovingham in Yorkshire. It had been alleged in an article in *Truth* that "the Vicar of Hovingham was to all intents and purposes driven out of his parish by the Tory Squire" on account of his Liberal opinions. Sir William, when asked in the witness-box by Clarke if it was true that the Vicar had been driven out by the Tory Squire, laughed heartily and said that he was not aware of it. Asked if he would not rather hear a good sermon from a Tory Divine than from a Home Ruler, he stoutly maintained that he did not believe that a Home Ruler could preach a good sermon. His bold front was too much for the defendants, who agreed, without taking a verdict from the jury, to pay Sir William £150 damages and his costs.

More serious was a marathon legal contest, in which he appeared the following month. This time his client was a Mrs. Zierenberg, owner and proprietress of the St. James's Home for Female Inebriates at Kennington Park. Of this agreeable institution *Truth* had postulated the query as to whether it was not in fact a gaol. Mrs. Zierenberg, it was alleged, took in women, some of them not drunkards at all but destitutes, and kept them to hard labour in the laundry, the place being not a charitable institution but "a sweating den where helpless women are compelled to toil twelve or fourteen hours a day on literally a bare subsistence in order that the proprietors may grow fat and pile up profits." In addition, it was said that under the guise of the St. James's Temperance Mission Hall, Mrs. Zierenberg and her husband had been running "a low music-hall of the worst type." The consequent libel action occupied no fewer than twenty days before Mr. Justice Hawkins and a special jury, and engaged the attention of two Silks and a Junior on each side. Clarke had with him Bigham, Q.C., subsequently Lord Mersey, President of the Probate, Divorce and Admiralty Division and author of the *mot*, when taking Mersey as his title: "That will leave the Atlantic for F.E." Mr. Labouchere had a future Lord Chancellor in the person

of Reid, afterwards Lord Loreburn, a future Solicitor-General in Lockwood, and a future Lord Justice in the person of Eldon Bankes. Clarke did not make his appearance in the case until its third day, and took no substantial part until the fourth day, a circumstance which will be regarded by lawyers as gratifying evidence of a busy practice, but may perhaps strike others, viewing themselves as potential lay clients, in rather a different light. It was not in any event a case calculated to inspire personal, in addition to professional zeal, for it became evident during the hearing that these two aliens had indeed waxed fat on the miseries of the unfortunate women in their institution. The chief interest of the case is in the attitude expressed by some of the witnesses called for the plaintiff. There was a former chaplain, who started by saying that he had often dined on the same food as the inmates had ; but as he had not dined with them, it was not clear how he knew that it was the same. This reverend gentleman had placed on record the impossibility of acting on ordinary rules " as we have to deal with the scum of the earth." Asked whether he did not see that girls of fifteen and grown-up women were kept separate, he said : " I regarded them all as prostitutes. They were all sinners—some greater than others. I did not interfere with a system which grouped them all together." The medical attendant, who was employed at the princely remuneration of £25 per annum, said that he approved of the women being put on bread and water for a few days, " as it would do them good in the state of their livers." Asked whether he put his patients on that treatment, he replied that he sometimes did ; but with regard to the Lady Superior (Mrs. Zierenberg) he had regretfully to state that he did not. The case dragged on for many weary, shocking days and resembled somewhat an enquiry into an adult feminine version of Dotheboys Hall. Hawkins, who had manifested considerable impatience throughout the proceedings, drove the last nail into the coffin of the Zierenbergs with a summing-up which would have done very adequate duty as the speech for the Prosecution if they had been prisoners in a criminal trial. Justice,

however, was done, and a verdict was found for Mr. Labouchere.

In the early summer of 1895 the Liberal Government, abandoned by Mr. Gladstone and opposed by him in their efforts to disestablish and disendow the Welsh Church, had clearly not long to survive. They took advantage of a narrow defeat in the House of Commons in a snap vote on the matter of cordite, to resign, and Lord Salisbury was recalled to Office. This time there was no difficulty about Law Officers, for those who had held the Offices in the previous Conservative administration were still available, Halsbury for the Woolsack and Webster and Clarke as Attorney and Solicitor respectively. There was, however, a decision to be made as to the conditions attaching to the tenure of the last two Offices ; that is to say, whether the Attorney and Solicitor should be allowed to take private practice. All three men were in favour of a reversion to the old system which had obtained before 1892. Lord Halsbury's interest in the matter was academic not personal, but his views were decided, and he asked Clarke to prepare a memorandum setting out that side of the question. This was laid by him before the Cabinet, which was anxious to follow the precedent set by Mr. Gladstone. Meanwhile, Clarke and Webster had agreed to refuse to accept the stipulation as to private practice as a condition of Office. The Cabinet, however, was not moved by Clarke's memorandum, and remained firm on the matter of private practice. Lord Salisbury was naturally anxious to retain the services of Clarke as Solicitor-General. He, therefore, wrote to tell him that he would hold open the question of the position of Solicitor-General until after the General Election, " to discover whether there is any middle term between your views and those to which the House of Commons seems to cling." Clarke went down to Plymouth for the Election, where he was again returned as Senior Member for the Borough, though this time his fellow Member was a Liberal, as his new Conservative colleague, Mr. Evelyn Hubbard, was defeated by sixteen votes.

Back in London, Clarke was faced with a new position

with regard to the question of Law Offices. Webster, with that graceful acquiescence which is often characteristic of lawyers in such crises, had agreed to become Attorney-General and to give up private practice. This made the issue for Clarke quite clear: he had either to become Solicitor-General on the same conditions or not at all. The decision was necessarily a difficult one, but to Clarke less than to most men. To refuse Office meant allowing another man to supersede him in the legal hierarchy, while he himself stepped aside from the path of preference with no guarantee that he would be able to strike it again. But Clarke felt that a matter of principle was involved, and on such questions he was extremely obstinate. Neither the effect upon his own career nor the persuasion of Lord Salisbury in the name of the Cabinet could move him. He persisted in refusing Office on terms which he thought derogatory to its dignity. Finlay became Conservative Solicitor-General, and Clarke continued in private practice. At the same time Lord Salisbury offered Clarke the reversion to the Office of Attorney-General if it should fall vacant in the next eighteen months. Though Clarke undoubtedly attached importance to this offer, Lord Salisbury's letter contained no reference to the terms on which that Office would in those circumstances be offered to Clarke, and it must therefore be assumed that they would be the same as those on which Webster held Office. It is difficult to see how Clarke could have accepted the Office on those terms in view of his attitude in 1895. The only possibility which suggests itself is that, as Webster had accepted these terms as Attorney-General, that battle was lost: nobody would ever again be able to hold that Office on the old terms, and therefore he would not be abandoning the position, as he would have done by becoming Solicitor-General in 1895.

In this controversy the Cabinet was on the side of the future, and Clarke was fighting the battle of reaction. In his effort to retain for the Law Officers of the Crown the right to accept private practice, Clarke showed little prescience. It should have been clear to him that any advance in the prestige and dignity of the Law Offices was compatible only

.. with an undivided allegiance. It was inevitable that, as the functions of Government expanded and with them the demands of Government upon its Law Officers, the Offices of Attorney-General and Solicitor-General should become ones of whole-time service to the Crown. But because Clarke was wrong it must not be thought that he had no case or that he was actuated by a sordid or unworthy motive. It would be easy for hostile critics to say—and no doubt there were circles in which it was whispered at the time—that Clarke's attitude was dictated by considerations of finance. Such a judgment would be wholly in error. It is true that the arrangement would probably have involved some financial sacrifice on the part of one who had so extensive and lucrative a private practice. But it would have left him with a five-figure income and in any case Clarke was never a man to be unduly occupied with money. Certainly it was entirely foreign to his nature to be ruled on any public question by private considerations. It is probable that he was wrong in thinking that the new position derogated from the proper status of the Law Officers as heads of their profession : it is certain that the view was conscientiously held. It is equally certain that however little support such a view might command to-day, it was then shared by most lawyers and many laymen. The position which he was asked to accept in 1895 was not the system which had been introduced for Russell and Rigby in 1892, which gave the Solicitor-General a salary of £6,000 and ordinary fees for Government business in addition, but the new system applied in 1894 to the new Liberal Law Officers, Sir Robert Reed and Sir Frank Lockwood, by which the Attorney-General received a comprehensive salary of £10,000, and the Solicitor-General one of £9,000, to cover all fees for business whether contentious or otherwise. Of this system of the inclusive salary Clarke said in his memorandum, which Halsbury read to the Cabinet : " It makes the Law Officers merely political officials ; it puts them under an arrangement the acceptance of which with any other client than the Crown would be a gross breach of professional rule, and would undoubtedly be punished by

their being disbarred. I am satisfied from the experience we already have from its working that its tendency is to increase and not lessen expenditure."

The proper position of Law Officers, and the method of their remuneration, has remained a matter of discussion until very recent years. While few have been found to agree with Clarke in the matter of private practice, many regard the system of an inclusive salary as being unsatisfactory. In Clarke's case his firmness, or his obstinacy, made his first experience of Law Office his last. He never regretted his decision, for he deemed it inevitable. Within a few years he was to be faced with a yet harder decision and a still greater sacrifice : and once again he showed the same firmness of purpose.

CHAPTER XIV

OSCAR WILDE AND EDWARD CLARKE

NO biography of Sir Edward Clarke would be complete without a reference to his part in the Oscar Wilde Case. Curiously enough, however, his own Memoirs contain no reference to it. Although this is a fate which it shares with many of the most interesting cases and episodes of his life, the omission is clearly deliberate. It was not a matter on which Clarke wished to dwell. Nor will occasion be taken here to produce a repetition of the oft-told story. That story has been told from the point of view of Wilde, Carson, Lord Alfred Douglas, Frank Harris, Robert Ross, and various other actors in the drama. Its moral has been pointed by outraged bourgeois, and its climax denounced by indignant æsthetes. There is little more to be said. But there is just this: that story has never been told from the point of view of the man who defended Wilde. That aspect of the story is important in any estimate of Wilde or Clarke.

Unlike Lockwood, who finally prosecuted Wilde and was reputed to have been on terms of some friendship with him, Clarke did not know Wilde. In view of Clarke's keen interest in the theatre, and his friendship with so many of the leading theatrical personalities of the day, this is at first sight a little surprising. But Wilde's career in the theatre, though brilliant, was itself surprisingly short. Further, Clarke, as a typical Victorian in so many ways, was—quite independently of Wilde's perversity, of which most of his friends were no doubt ignorant—scarcely the man to be attracted by Wilde's quality of mind or his attitude to life. He was far from regarding them with that genuine contempt which Carson seems to have felt for them; but their superficial and somewhat flippant quality were antipathetic to

the earnestness which was fundamental to Clarke. So it was that in 1895 Clarke knew of Wilde only as the rest of London knew him, as a brilliant and successful playwright, whose mannerisms and affectations would certainly have been considered exaggerated and peculiar in a man of less artistic and social talent. The intersection of his orbit and Wilde's began when Lord Queensberry, hating Wilde because of his friendship with his son Lord Alfred Douglas, left the famous card with the porter of the Albemarle Club, bearing the inscription "To Oscar Wilde posing as a sodomite"—this last word being the Marquess's curious rendering of "sodomite."

Among the misconceptions current as to the Wilde trial, prominent is that which portrays Wilde as confidently prosecuting the Marquess, gaily bantering with Carson at the trial, until the unexpected revelations which Carson produced as to his conduct struck him down from his pinnacle of flippant pride. In face of the facts this version will not stand. Queensberry's action in leaving the card at the Albemarle Club was a challenge to Wilde. Before doing it Queensberry had taken legal advice, and it was as a result of this advice that the word "posing" was introduced. In spite of this watering-down of the libel, Wilde was virtually compelled to take action in order to defend his reputation. Nevertheless, he knew from the start that it was he who was on the defensive, and, however inflated by his own great success he may then have been, it is unlikely that he can at any time have underestimated its seriousness.

Whatever his attitude may have been, it is certain that his solicitor did not underestimate the seriousness of the case. Mr. Charles Humphreys, a City solicitor of great standing, and brother-in-law to Lord Halsbury, appeared for the prosecution at the Police Court, where the magistrate committed Lord Queensberry to trial at the Old Bailey. After this he came down to the Temple to ask Clarke if he would lead for the prosecution when Lord Queensberry came up for trial. It was not a case with which Clarke felt much sympathy, and from the phrase in his notes about the

case found among his private papers, "I need hardly say that I had nothing to do with the institution of the prosecution," it looks as if, had his advice been asked at the time of Wilde's receipt of Queensberry's card, he would have counselled Wilde to put up with Queensberry's insult and take no action. When Mr. Humphreys came down to the Temple to consult him the time for giving this advice was passed. Clarke could only accept the brief or refuse it, and consequently he told Mr. Humphreys that he would like to see Wilde personally before accepting it. In accordance with this wish, Mr. Humphreys brought Wilde to Clarke's Chambers the next day. After some preliminary conversation, Clarke came to the main point: "I can only accept this brief, Mr. Wilde, if you can assure me on your honour as an English* gentleman that there is not and never has been any foundation for the charges that are made against you." Wilde stood up and solemnly declared on his honour as an English gentleman that the charges were absolutely false and groundless. Thereupon Clarke announced that he would accept the brief, and set to work with his friend and Junior, Willie Matthews, with whom he had been associated in a great many cases, to prepare for the trial. There is no doubt that at this stage and at the beginning of the trial itself Clarke was fully satisfied of Wilde's innocence. It does not seem to have occurred to him that a man who was guilty of a criminal offence might very well not hesitate to deceive his counsel on the question of his culpability; nor does he seem altogether to have realised the very difficult position that Wilde would be placed in if he had answered the question negatively. Of course, if Wilde had been at this stage on his trial for a criminal offence, Clarke would not have put this question to him, for it would be contrary to the tradition of the Bar for Counsel to make a solemn asseveration of innocence a condition of defending a prisoner. It was only because Wilde was in this case prosecutor that Clarke felt justified in putting this question to him.

Clarke opened the case for the prosecution at the trial of

* Wilde was, in fact, Irish; but this seems to have been lost sight of by both parties to what must have been a somewhat tense and embarrassing episode.

Lord Queensberry with great confidence. It was true that Lord Queensberry had stuck to his guns, and pleaded justification as a defence to the charge of criminal libel. The particulars of justification referred in part to the quality and alleged meaning of some of Wilde's writings, but, more seriously, to certain individuals, whom it was alleged that Wilde had solicited to commit a very grave offence and with whom he had been guilty of indecent practices. The fact that these episodes were instanced in the plea of justification disposes of the theory that Carson sprang a series of surprises and forced him into an astonished and battered capitulation. Though Clarke was, of course, aware of these allegations, they did not shake his confidence, for the young men specified were mostly blackmailers and people of low character whose assertions were not to be relied upon. And had he not Wilde's word of honour to assure him that the charges were groundless? He was assisted, too, by Lord Queensberry's reputation for eccentricity. Amongst his escapades most notorious were the scene which he had made at the first night of a play, "The Promise of May," by Lord Tennyson; his effort to horsewhip Lord Rosebery, on whose recommendation his eldest son had been made a peer in his own right; and his bad treatment of his wife, who had divorced him some years previously. It was not difficult for Clarke in his opening to depict Wilde as a cultured and distinguished man of letters, subjected to an unwarranted and wrongheaded persecution. The effort of Lord Queensberry to gain admission to the St. James's Theatre on the first night of "The Importance of Being Earnest" with a bouquet of vegetables for Wilde, bore a resemblance to his demonstration at Lord Tennyson's play, except that on this occasion the theatre was forewarned and denied him admission. In Clarke's narration of this episode by a slip of the tongue he substituted the name of Lord Rosebery—then Prime Minister—for that of Lord Queensberry, a mistake which was greeted with loud and appreciative laughter.

Contrary to what is often thought, Wilde, at any rate during his examination-in-chief, made a good witness.

Clarke conducted his examination himself, and considered his demeanour excellent. He was quiet, he was clear, and he was definite, three admirable qualities in a witness. The story of his cross-examination by Carson is well known. Carson was handicapped by a bad cold at the beginning, and so long as the cross-examination dealt with the literary aspect of the plea of justification, Wilde scored heavily. Wilde's mind, nimble and elusive, was too quick in the matter of repartee for Carson. For a time it was like a sparring match, with Wilde scoring all the points—nothing to make a great impression, but decisive hits. Clarke had to intervene between the two when, to Carson's contemptuous question as to whether the phrase appearing in one of Wilde's letters, "your slim gilt soul walks between passion and poetry" was a beautiful phrase, Wilde replied, "Not as you read it, Mr. Carson; you read it very badly." In spite of the epigrammatic brilliance of many of Wilde's answers, Clarke may well have felt a certain uneasiness as to the effect of his method and manner under cross-examination. An English jury, which is supposed to consist of ordinary individuals, could not be expected to relish the scorn with which Wilde disclaimed "any knowledge of the views of ordinary individuals," and it might well be that Wilde was going to win all the battles and lose the war. The literary side of the case was, however, little more than a preliminary skirmish in which both sides sought to establish a favourable position for presenting their interpretation of the other episodes. In this preliminary skirmish, all went well with Wilde, and though the jury and spectators may have resented his attitude as affected and "highbrow," they also, no doubt, recollected that Wilde was a highly-paid entertainer to whom considerable licence was naturally given; instead of sitting through some dreary legal problem they had, as it were, free front stalls for an exchange of dialogue to which the sense of real and grim conflict gave a piquancy beyond anything in "An Ideal Husband" and "The Importance of Being Earnest," which were drawing crowded and enthusiastic houses nightly in London.

Carson moved on to his next point of attack, and cross-

examined Wilde as to the stories told by the various young men. Still Wilde countered him as before.

"Did any of these men," asked Carson, "who visited you at the Savoy have whiskeys and sodas and iced champagne?"

"I can't say what they had."

"Do you drink champagne yourself?"

"Yes; iced champagne is a favourite drink of mine—strongly against my doctor's orders."

"Never mind your doctor's orders," said Carson sternly.

"I never do," came the prompt and disarming reply.

These were not quite the tactics which Clarke would best have liked in an innocent man. He would have preferred a little more honest indignation, and a little less persiflage. But treating the matter lightly was no doubt Wilde's way of emphatic repudiation, and undoubtedly his tactics were effective. Some of the incidents that were being put to Wilde were unusual and the interpretation sought to be placed upon them unsavoury; but Clarke remembered Wilde's assurance and his confidence was not greatly shaken. So matters proceeded during the first day and until the luncheon adjournment on the second. During the interval Wilde came up to him and said: "Can they examine me about anything and everything they choose?" Clarke replied in the affirmative, and Wilde went on to inquire whether they could ask about an incident which had never been mentioned. "Certainly," said Clarke. "What is it that is in your mind?" "Well," said Wilde, "some time ago I was turned out of the Albemarle Hotel in the middle of the night and a boy was with me; it might be awkward if they found out about that."

This voluntary revelation on the part of Wilde put a very different complexion on the matter. The sinister interpretation which Carson was striving to put upon Wilde's relations with these unexpected young men, became infinitely more probable. The particularity of Carson's questions as to these matters had already provoked some uneasiness in Clarke, and he set himself with some anxiety to follow the

afternoon's proceedings. Wilde still scintillated at times, as when in reply to the question : " Did you ever hear that he had been employed as a newspaper boy ? " he answered, " No, I never heard that he was connected with literature in any form." But these quips were now the exception and not the rule. Carson was forcing the pace with suggestions of criminal conduct, which Wilde indignantly denied. Towards the end of the afternoon Wilde made the famous slip which lent colour to the suggestion that he was the sort of man to whom this conduct would not be foreign. Carson asked in respect of a certain young man who was mentioned, " Did you ever kiss him ? " " Oh, dear no," replied Wilde. " He was a peculiarly plain boy. He was unfortunately extremely ugly ; I pitied him for it." Carson pressed home his advantage vigorously and had clearly got through Wilde's defences at last.

That night Clarke had a very difficult decision to make. He considered the situation in the light of the course events had taken and of the communication which Wilde had made to him at the luncheon adjournment, and came to the inescapable conclusion that his client was in grave danger. In the circumstances it was his clear duty to warn Wilde. He had fixed a consultation for the following morning before the case was resumed, and when he saw Wilde next morning he at once told him that he had come to the conclusion that it was almost impossible, in view of all the circumstances, to induce a jury to convict of a criminal offence a father who was endeavouring to save his son from what he believed to be an evil companionship. This being so, he told Wilde that, after full consideration, he advised him in his own interest to allow a statement to be made to the Court and to withdraw from the Prosecution, for if the case went to its end and the jury found that the accusations were justified the Judge would undoubtedly order his arrest. Wilde listened quietly and gravely and then thanked Clarke for his advice in accordance with which he said that he was prepared to act. Clarke then told him that there was no necessity for his presence in Court while the announcement was being made, this being said in the hope and expectation

that Wilde would avail himself of this opportunity for escaping from the country.

Having left Wilde, Clarke went into Court, where Carson was due to continue his opening speech for the Defence which he had begun on the afternoon of the previous day. He carefully prepared the terms of his announcement, which was naturally a task of some delicacy, and then, plucking Carson by the gown, he communicated his intention to him. He then rose to make his announcement, which concluded with the words: "In these circumstances, I hope your Lordship will think that I am taking the right course, which I take after communicating with Mr. Oscar Wilde. That is to say that, having regard to what has been referred to by my learned friend in respect of the matters connected with the literature and the letters, I feel we could not resist a verdict of Not Guilty in this case—Not Guilty with reference to the word 'Posing.' In these circumstances I hope you will think I am not going beyond the bounds of my duty, and that I am doing something to save, to prevent, what would be a most horrible task, however it might close, if I now interpose and say on behalf of Mr. Oscar Wilde that I would ask to withdraw from the prosecution." A verdict of Not Guilty was accordingly taken against Lord Queensberry, who left the dock amid the congratulations of his friends and some applause in Court, which the ushers, true barometers of public opinion, made only half-hearted efforts to quell.

Wilde had left the precincts of the Court after his consultation with Clarke, but, instead of making arrangements to go abroad at once, as Clarke hoped and his friends intended, he spent the day, through courage, false optimism, or indecision, in lingering in various hotels. Meanwhile, Mr. Charles Russell, solicitor to Lord Queensberry, lost no time in communicating with Mr. Hamilton Cuffe, Director of Public Prosecutions, and in laying before him the statements of the witnesses, whom Carson had intended to call. The result was that a warrant was issued for the arrest of Wilde and was executed that evening. In the meantime, Wilde had written a letter to the *Evening*

News to explain the reason for withdrawing from the Prosecution :—

“ Holborn Viaduct Hotel.

April 5th, 1895.

To the Editor of the *Evening News*.

Sir,

It would have been impossible for me to have proved my case without putting Lord Alfred Douglas in the witness-box against his father. Lord Alfred Douglas was extremely anxious to go into the box, but I would not let him do so. Rather than put him into so painful a position, I determined to retire from the case, and to bear on my own shoulders whatever ignominy and shame might result from my prosecuting Lord Queensberry.

Yours, etc.,

OSCAR WILDE.”

Wilde would have had ample time—about seven hours—in which to leave the country had he so desired. Clarke did not know that he had not done so until the following morning when he heard of his arrest. The immediate cause of his arrest being the collapse of the prosecution of Lord Queensberry—though it would of course have followed if that trial had proceeded to its end—Clarke at once wrote this letter to Mr. Humphreys :—

“ Royal Courts of Justice.

April 6th, 1895.

Dear Sir,

Having regard to the events of yesterday I think it right to say that if Mr. Oscar Wilde would like me to defend him at his trial my services shall be at his disposal, and in respect of services so offered I, of course, shall not accept any fees. Will you kindly communicate with Mr. Oscar Wilde and ascertain his wishes.

Faithfully yours,

EDWARD CLARKE.”

Mr. Humphreys, who had represented Wilde at the Police Court that morning, wrote to Clarke immediately on receipt of this letter and, after seeing Wilde, wrote again the same day.

“ Giltspur Chambers,
Holborn Viaduct, E.C.
April 6th, 1895.

Dear Sir Edward Clarke,

I have submitted your letter to Mr. Oscar Wilde, who wishes me to express to you his deepest gratitude for your very kind offer, which he most gladly accepts.

Believe me,

Yours faithfully,

CHARLES O. HUMPHREYS.”

Clarke appeared for Wilde on the resumed hearing in the Police Court, in the first trial at the Old Bailey before Mr. Justice Charles, and in the second trial at the Old Bailey before Mr. Justice Wills, all without fee. It is probable that by now—though he has left no record of the fact—he no longer, in his inner personal consciousness, believed in Wilde’s innocence, though, like a true advocate, he naturally did not let his mind dwell on this. The very topmost flights of criminal advocacy are probably only attained by great advocates convinced of their client’s innocence; but Clarke made a great forensic effort, even if not quite in this class, on behalf of Wilde. It is not generally realised how near to success that effort came. Wilde was charged with various acts of gross indecency and conspiracy to procure such acts with a man named Taylor, who was alleged to have acted as Wilde’s procurer. The difficulty of Clarke’s task was greatly increased by the strong prejudice existing against Wilde, by irresponsible rumours daily in circulation, and by the fact that, as Wilde and Taylor were tried jointly, the evidence against Taylor, though often not technically evidence against Wilde, was bound to influence the minds of the jury against him. In spite of this, Clarke succeeded in discrediting much of the evidence for the Prosecution:

in convicting one of the witnesses for the Prosecution of perjury and securing his dismissal from the box by the Judge ; in making an eloquent plea for Wilde which drew the applause of the Court ; in securing a verdict of not guilty on the conspiracy count ; and finally in obtaining a disagreement of the jury on the substantial charges.

After this disagreement it might have been expected that the prosecution would have been dropped. So far from this being the case, Sir Frank Lockwood, the Liberal Solicitor-General, was sent down to the Old Bailey to lead for the Prosecution in the new trial at the next Sessions. The result of this was that, although Clarke called no evidence save that of his client, Sir Frank Lockwood, as Law Officer of the Crown, had the right to the last word. Lockwood, whose conduct of the Prosecution did not err on the side of restraint, availed himself of this right, which was the more galling to Clarke in view of the fact that during the whole six years of his period as Solicitor-General he had never once exercised it himself. A further difficulty, quite independent of the merits of the case, was the attitude of the newspapers, which were for the most part bitterly, and in some cases improperly, hostile to Wilde ; one had even gone to the length, after the jury had disagreed in the first trial, of publishing an analysis of their alleged voting on the various issues, the figures, of course, being decidedly against Wilde. A third element of difficulty was present in the fact that, though, there now being no count of conspiracy, Wilde and Taylor were tried separately, Taylor was tried first and convicted of indecency. Though Taylor was not convicted of procuring for Wilde, the fact of this associate of Wilde's being found guilty of indecency was liable to create prejudice against Wilde. Clarke applied in vain for a postponement of the hearing of Wilde's case. Mr. Justice Wills, who was not inclined to favour the application, wrote personally to Clarke to explain his attitude : " I doubt myself if any earthly purpose can be answered by postponement of your case. Every man in the Kingdom will know, or does know, the outlines of the evidence in this case, and my experience is very much in

favour of juries as to mere matters of prejudice in criminal trials." The letter concluded: "If anything could make the prospect of Wilde's trial tolerable to me or to anyone else, it is the fact that you will conduct the defence."

Consequently, Wilde's trial came on without postponement. Clarke battled bravely against adverse circumstances in defence of his client. After a vigorous denunciation of the blackmailers who were giving evidence for the Prosecution, and the way in which they were kept and clothed pending and during the proceedings, Clarke made a last plea for Wilde: "If on an examination of the evidence you feel it your duty to say that the charges have not been proved, I am sure you will be glad that the brilliant promise which has been clouded by these accusations, and the bright reputation which was so nearly quenched in that torrent of prejudice which a few weeks ago was sweeping through the Press, has been saved by your verdict from absolute ruin; glad, too, that your verdict will leave him, a distinguished man of letters and a brilliant Irishman, to live among us a life of honour and repute, and to give in the maturity of his genius gifts to our literature of which he has given only the promise in his early youth."

Applause greeted this speech, and even after Lockwood's reply and the Judge's summing-up, there still seemed to be hope for Wilde, which was increased by the two hours' absence of the jury. During this retirement Lockwood is reputed to have said to Clarke: "You will dine your man in Paris to-morrow"; but Clarke himself did not take this optimistic view of the verdict. He was, of course, right; but the interesting thing about the verdict is that the jury convicted Wilde on all counts except the only one on which he was charged with, committing an offence against a young man of any respectability, and on this count they acquitted him. The consequence was that Wilde was convicted substantially on the evidence of those who were by their own account accomplices, and certainly men of bad character, fortified by way of corroboration mainly by that of servant girls who had not seen fit effectively to comment on the episodes to which they referred at the time when

they had taken place. Though it can hardly be reasonably doubted that Wilde was guilty of the offences laid at his door, it is more open to question whether they were brought home to him with that certainty of proof which the English Law demands.

Whatever the propriety of the verdict, there was no doubt of its popularity, at any rate with certain sections of the populace. On leaving the Old Bailey after Wilde's conviction, Clarke must have contrasted the motley crew of loafers and prostitutes who were dancing with joy at Wilde's downfall, with that more generous crowd which had applauded Adelaide Bartlett's acquittal and his own great share in it nine years before. For himself he had conducted for no reward a long battle on behalf of one who was execrated by the vocal public, who had deceived him at the beginning, and to whom he was bound by no ties of friendship. Having done his full duty, he preferred to forget the trial and seldom again referred to it.

CHAPTER XV

OPPOSITION TO BOER WAR AND RETIREMENT FROM PARLIAMENT

BY 1895 Clarke was the unchallenged master of advocacy at the English Bar. His only rival for the supremacy had been Sir Charles Russell, who brought to his work an attractive Irish eloquence and a pugnacious vigour in cross-examination, both greatly pleasing to the fanciers of the Courts. With Russell, Clarke had had many a forensic combat, and for some years the knowledge that one of the two was retained in a case generally led the opposing party to retain the other. The two were undoubtedly well matched, and were precursors of famous legal duellists in later days such as Carson and Rufus Isaacs in the succeeding generation, and perhaps Mr. Birkett and Sir Patrick Hastings in contemporary times. Clarke and Russell were not only well matched ; they were sufficiently dissimilar in method to heighten the sense of personal competition. If Russell excelled in combativeness, Clarke was his superior in finesse. If Russell's eloquence was more inspired with passion, Clarke's was charged with greater earnestness. They had both been Law Officers of the Crown ; both started from humble origins, and had for long been earning enormous fees ; the names of both, associated with a long line of *causes célèbres*, had become household words. The trial of Adelaide Bartlett and the Baccarat Case were but two of the many famous cases which gave to these two skilled performers an opportunity of trying their forensic skill against each other.

Russell, it may be mentioned, though a strenuous advocate and a hard-working Law Officer, did not share his political leader's robustness of constitution, as the following anecdote exemplifies. Russell told Clarke that the last time he was out with Mr. Gladstone at dinner was at Gray's Inn. After dinner in Hall the Benchers and their guests adjourned as

usual to the Benchers' Parlour for dessert. Sir Charles was sitting next but one to Mr. Gladstone and on his left. Presently the port came round. Mr. Gladstone helped himself and noticed that Russell let the bottle pass him. "Why, Sir Charles," said Mr. Gladstone, "you surely will not let that wine go by untasted? It is excellent wine, Sir, excellent." "I do not doubt it," said Russell, "but so was the champagne, and I have indulged too much in that to risk a mixture of port so soon." "Oh," said Mr. Gladstone, "you need not be uneasy. I have taken the very highest advice upon the subject, and I am assured that if you allow twenty minutes to elapse between the two wines there is no fear whatever of their disagreement."

"I gave way," said Sir Charles, "and drank some port, and could hardly do my work in the morning I had such a headache."

In 1894 Sir Charles Russell had succeeded Coleridge as Lord Chief Justice, and Clarke at the age of fifty-three was left without a serious rival. The competition of others besides Russell was falling away. Webster and Finlay were forbidden by the arrangement of 1895 to take private practice; Lockwood died in 1897. There were, of course, younger men coming on to challenge. Wilde's prosecution of Queensberry had brought the star of Carson into the legal firmament; and rapid progress was being made by a late starter in the person of Rufus Isaacs. In 1897 Clarke had a reminder that a still younger generation was coming into the field, when for the first time he was briefed to lead his son Percival in a case. For the time being, however, Clarke outdistanced his challengers fairly easily, and it is fair to say that, with the elevation of Sir Charles Russell to the Bench, for general advocacy of the highest order Clarke stood unquestionably at the head of his profession.

Lucrative as was Clarke's practice in these years, it contained few cases of great dramatic or sociological interest. Many counsel, of great reputation at the Bar and big earning capacity, throughout their careers participate in cases of importance in the commercial world, but never of any general interest. Though Clarke attracted a very different

type of case from this, which his eloquence and personality helped to invest with drama, the bulk of his practice comprised that type of commercial case which is of interest only to those who are parties to it. In the years 1895 to 1899 it was this type of case which figures most largely in Clarke's fee book. There were, of course, exceptions, including some of his usual crop of divorces and libels. In July of 1898 he had an interesting case in the Probate Court in which he was one of three Q.Cs, who appeared for the plaintiff, the other two being Inderwick and Marshall Hall. They appeared in support of a will made a month before her death by a Mrs. Howard, who had left £30,000 of her total fortune of £68,000, to her medical attendant, Doctor Kingsbury. Her son, disappointed at what he considered her unnatural preference, challenged the will on the grounds that his mother had been of unsound mind at the time of making it, and had been subjected to undue influence on the part of Doctor Kingsbury. Carson was in characteristically pugnacious mood on behalf of the son, but the facts of the case—and perhaps the triple line of Q.Cs—were too strong for him, and Doctor Kingsbury got the verdict and his £30,000. He wrote to thank Clarke: "I cannot rest until I write to say once more how truly grateful I am to you for the way you stuck to me all through the recent trial, and for the splendid manner in which you won the case. Though you did not tell me, I learnt from another source what sacrifices you made on my behalf. The admiration of my sympathisers for your eloquent address knows no bounds, but their fury towards the ex-Crown Prosecutor for his cowardly attacks on me is almost comical."

But incomparably more important both in point of public interest and in the effect which it was to have on Clarke's own life, than any private case which he undertook during these years, was his defence of Doctor Jameson, when he and some of his colleagues were tried after the collapse of the Jameson Raid. The raid had its origin in the intransigent attitude of the Boers in the Transvaal. There little success had attended the efforts of Rhodes and the Imperialists to realise the aspirations expressed in the

slogan "Africa for the Afrikanders," by making South Africa a democratic self-governing Union under the protection of the British Flag. The Transvaal alone had not become a party to the Customs Union, which, concluded in 1889 between Cape Colony and the Orange Free State, soon spread to the other communities in South Africa. The Boer attitude was reflected in the personality of Kruger, four times President of the Transvaal, who sought to impose a policy of narrow exclusiveness. This policy became virtually indefensible after the discovery of gold in the Transvaal brought a steady flow of British and other settlers into the country. It is readily comprehensible that, in face



of such influx, the Boers were anxious to take steps to prevent the swamping of their own national culture. This they could have done by prohibiting altogether, or severely restricting, immigration. But what in fact they did was gladly to reap the benefit of the newcomers' operation of the gold mines, from which the main revenue of the State came to be drawn, and endeavour to preserve the absolute integrity of the Boer State by refusing to these "Outlanders" the franchise and civic rights. As the number of Outlanders increased, their claim to full participation in the life and government of the country increased; but, instead of conceding a larger share, the Boers pursued a policy of yet severer restriction. Several measures of a repressive nature were enacted, and in 1894 the position was that even in the most favourable circumstances no Outlander could obtain

the franchise in the Transvaal until he had been fourteen years in the country and was forty years of age ; and it by no means followed that these two qualifications were sufficient to entitle him to it. The Outlanders worked unceasingly for a greater share in the government of the country, and in August of 1895 they presented a great petition asking for the franchise. Despite its 34,000 signatures—a great many in that scattered and sparsely populated country—the Transvaal Government rejected the petition outright, and with it the best hopes of a satisfactory constitutional settlement.

Meanwhile, the disabilities of the Outlanders were attracting the attention of powerful elements outside. Cecil Rhodes, Prime Minister of Cape Colony and chief advocate of British Imperialism in South Africa, was actively sympathetic on their behalf, while the advent of Mr. Chamberlain to the Colonial Office in the new Conservative Government of 1895 proclaimed the end of British lassitude and acquiescence in the Imperial sphere. At about the same time an instrument was created either by accident or design for the coercion of the Transvaal Government. A strip of land along the frontier of the Transvaal, where a railway was to be constructed, was ceded by arrangement with native chiefs in the Bechuanaland Protectorate to the British South Africa Company. Simultaneously, the Bechuanaland Police, a force which included many British officers seconded from their regiments for that purpose, were disbanded, and its duties taken over by a new force enrolled by the British South Africa Company. This force, in which many members of the Bechuanaland Border Police had re-enlisted at a higher rate of pay, was commanded by Doctor Jameson, legal administrator for the company, and Sir James Willoughby, an army officer. Colonel Grey, who had formerly commanded the Bechuanaland Police, also continued with the Company's Force. These men, like Rhodes himself, became convinced after the Transvaal Government's rejection of the petition, that nothing could be hoped for from constitutional pressure. It was decided, therefore, to use the Company's Police to make a surprise *coup* against

the Transvaal Government. The object of the *coup* was that Doctor Jameson and his force should co-operate with the Outlanders in Johannesburg with the ultimate objective of seizing Pretoria. Pitsani Potlugo, on the Bechuanaland border, where Doctor Jameson was to collect his forces, was 170 miles from Johannesburg, but no important town lay between, and it appeared possible that the raid might succeed. But, as is generally the case with such ventures, unforeseen difficulties arose. The smuggling of arms was not as easy as had been anticipated; but even more serious was a dispute between Cecil Rhodes, the real director of the movement, and some of the Outlanders in Johannesburg as to whether the insurrection should be carried out under the British flag or that of the Transvaal. The effect of this disagreement was a decision to postpone the rising, which was communicated to Doctor Jameson by a telegram from Cape Town in the following terms: "It is absolutely necessary to delay flotation. If foreign subscribers insist on floating without delay anticipate complete failure." The receipt of this telegram put Doctor Jameson in a dilemma, for he had reason to believe that, in spite of the great secrecy with which the insurrection had been planned, his project was suspected by the Transvaal Government. In these circumstances Doctor Jameson decided to proceed, and in spite of a telegram ordering him to return, entered the Transvaal with an armed force of 350 men and six maxim guns from Pitsani Potlugo while Colonel Grey took about 200 men and two maxim guns from Mafeking. In spite of disagreement and orders for recall, the expedition nearly reached Johannesburg. At Krugersdorp they were challenged by a force of Boers and fought a minor engagement, in which they fired away three-quarters of their ammunition. The engagement was indecisive, but at its conclusion Doctor Jameson waited four hours in the expectation that his friends in Johannesburg might send out a force to co-operate with him. This delay gave time for a superior force of Boers to come up and surround Doctor Jameson's slender column. Faced by overwhelming numbers, and scarcely equipped with ammunition, Doctor Jameson had no

alternative but to surrender under a flag of truce. The expedition had cost the lives of twenty-five men, and the survivors had subsisted for the last two days without any rations. Any doubt as to the popularity of the attempt in England was set at rest by the unwisdom of the Kaiser in sending a congratulatory telegram to President Kruger, in which he appeared to recognise the Transvaal as an independent sovereign state.

Doctor Jameson and his principal co-adjutors were brought to London by way of Pretoria, and were there charged with offences against the Foreign Enlistment Act. Clarke was one of the first people to meet Doctor Jameson in London, for to him was entrusted the responsible and difficult duty of his defence. Of Doctor Jameson personally Clarke formed a very high opinion, which does not seem to have extended to the expedition, the provocation for which he never, perhaps, fully realised. The importance of that, however, lay in the future : in the summer of 1896 Clarke's task was to defend Doctor Jameson on the charges made against him. Clarke received instructions that he was to follow no line of defence which might cause embarrassment to Her Majesty's Government. The effect of this was severely to limit his chances, for there could be no dispute as to the vital facts of the case. Consequently, when the trial opened, Clarke was forced to rely on technicalities. The setting of the trial, which was a trial at Bar before three judges headed by Lord Chief Justice Russell ; the personnel which, in addition to the popular and almost legendary figures of Doctor Jameson, Colonel Grey, and Sir James Willoughby, included the more familiar figures of Clarke, Carson, Webster, Finlay and Lockwood as the leading representatives of the sixteen counsel briefed in the case ; and the circumstances of the Raid, with its added glory in British eyes of having called forth the German Emperor's disapproval, all should have pointed to a most exciting case. In the event, however, the case was found dull by anybody not a constitutional lawyer, for it consisted almost exclusively of the proving of the facts, which were not in substantial dispute, and a series of legal objections raised by



Baron Pollock

Lord Russell

M. Justice Hawkins

A gentleman who went fast-
to sleep on the bench and
snored loudly.



The Attorney General

S. J. Janson

Sir E. Clarke

Sir J. Willoughby

Mr. H. Sutton

Capt. Hon. H. White

Mr. E. Carson Q.C.

Sir F. Lockwood

Capt. Hon. R. White

Major Grey

Hon. C. Crossin

Clarke in the attempt to secure an acquittal for his client, which was impossible on the simple facts of the case. In these efforts after a summing-up from Russell very adverse to the Defendant he was unsuccessful, and Doctor Jameson was sentenced to fifteen months' imprisonment without hard labour. He had, however, secured a favourable verdict from the majority of Englishmen, who considered him a hero, and from his own fellow-countrymen in South Africa, by whom he was made Prime Minister of Cape Colony not many years after his release. It was in this capacity that he received and entertained his former Counsel, when Clarke went on his South African tour ten years later.

The Jameson Trial turned out better for Doctor Jameson than it did for Clarke. The course of South African politics brought Doctor Jameson the premiership of South Africa's most important State; to Clarke it brought a reluctant disagreement with his Party and the necessity to criticise the Government which he had been elected to support. Clarke had formed the opinion from the secret documents put before him in the Jameson Case that the British Government was involved in the attempt. From this came the idea that the actions of the British Government at this time and in the following years were not based on a policy sufficiently mindful of the rights and interests of the Boers. This being so, he watched the events in South Africa following on the Raid in a frame of mind different from that of the average member of the Conservative Party whose long-standing irritation at the British defeat at Majuba Hill was powerfully reinforced by the Kaiser's telegram to Kruger.

In South Africa the effect of the Raid and the conviction of its leaders was naturally to embitter feeling and to make more difficult the task of peaceful settlement. Nor was the task facilitated by the attitude of Kruger, whom the Raid had rendered even less amenable to compromise than before, and by the visionary ideas of a South Africa united under a Dutch Republican flag, which began to dominate the minds of the extremists. Nevertheless, undeterred by these unpromising factors, the Outlanders persisted in their efforts to obtain the franchise by constitutional means.

These efforts were no more successful than the earlier ones, and at last the Outlanders petitioned for intervention. The position as to this was summarised in a dispatch from Lord (then Sir Alfred) Milner to Mr. Chamberlain: "The case for intervention is overwhelming . . . the spectacle of thousands of British subjects kept permanently in the position of helots, constantly chafing under undoubted grievances and calling vainly to Her Majesty's Government for redress does steadily undermine the influence and reputation of Great Britain and the respect for British Government in the Queen's Dominions." Lord Milner himself would have been satisfied with a five years' enfranchisement of the Outlanders, confident that in that period they would be able to arrive at a peaceful solution of their own difficulties. But Kruger and his following were not disposed to grant even this qualified franchise. They did not intend to yield anything to reason, and did not consider that they would be obliged to surrender anything to force; for the Boers were far from sharing the complacent view of the average British citizen as to the superior effectiveness of British arms in South Africa. Far from yielding to the demands of the Outlanders, Kruger adopted an attitude of defiance, and showed a strong disposition in the negotiations with the British Government to assert the independence of the Transvaal from British suzerainty. Thus in the summer of 1899 it became increasingly obvious that Britain and the Transvaal were following that well-worn path of diplomatic exchanges and rejected proposals which leads inevitably to war.

That portion of the thinking people of Great Britain, who became concerned with the condition of affairs in South Africa did not feel any great measure of anxiety that summer on account of the very great confidence reposed by the majority of the nation in Mr. Chamberlain and in the man on the spot, Sir Alfred Milner. Clarke's interest went deeper than that of most, and the memory of the Jameson Raid and of all the documents he had read in connection with it did not give him the same easy confidence that the course of negotiations was proceeding aright. Nor was his

uneasiness removed by the talks which he had with Sir Robert Herbert, a former Assistant Under-Secretary at the Colonial Office, who was a fellow traveller with him on a trip to Russia and the Baltic, which he made in the Long Vacation of 1889. The result was that on his return Clarke set about mastering the contents of all the relevant official papers which had been issued in connection with the South African situation during the period of his absence abroad. The first fruits of his labours were a letter to *The Times*, written from Sherborne Castle, where he and his wife were guests on their return from Russia. The concluding paragraph of the letter was firm and unmistakable in its viewpoint: "I cannot imagine it possible that they (the Government) would take the responsibility of advising the Crown to declare war against the South African Republic in enforcement of a policy which has not yet been announced or even formulated, without taking the proper means of ascertaining whether that policy has the approval and support of the people of the United Kingdom. There may be reasons, not yet apparent, which would justify war with the Transvaal, but we have a right to know them before we are committed to such a war."

This letter was published ten days before Clarke was due to make his annual address to the electors of Plymouth. Even before the publication of this letter there existed a possibility that the meeting might not pass off with its usual harmony, for Clarke had offended a considerable element of his electorate by a speech which he had made six months earlier, strongly criticising the ethics of "war for commerce." Before the annual meeting, the Executive of the Plymouth Party met and passed a resolution warmly commending the policy and attitude of the Government. This resolution was officially communicated to Clarke, and was, therefore, at least a hint and at most a rebuke. It followed that there was considerable excitement and speculation as to what course he would take. Any doubts as to this were soon set at rest by his expression of readiness to resign his seat in Parliament within twenty-four hours if the Executive disapproved of his course of conduct. He then proceeded to

a plea for restraint in the interests of peace : " For one man in England to-day who is in favour of war because of the interests of the Outlanders there are a dozen who are ready to shout for war because they want to avenge Majuba Hill. But how long ago was Majuba Hill ? If Majuba Hill were to be avenged at all, the time was then, not now. . . . It would be a disgrace to the country to enter into war. What one wants to guard against is the overwhelming passion of the moment, and the effect that may be produced by the clamorous ignorance of the theatres and the streets. For those of us who feel deeply on matters like this to make an appeal to the conscience of the people of this country, it is time to remind our countrymen of the greatest poem that has been written by any living man, and the majestic appeal that was made to us a little time ago :—

‘ God of our fathers, known of old—
Lord of our far-flung battle line—
Beneath whose awful hand we hold
Dominion over palm and pine—
Lord God of Hosts, be with us yet,
Lest we forget—lest we forget ! ’

" Lest we forget that our wealth and strength and the splendid range of our imperial sway bring to us responsibility as well as privilege. Let us rise to our great mission. Let us show that we are capable of a calm and patient and manly spirit in dealing with international affairs—prompt to resent insult, steadfast in the protection of our national interests, ready to act for the protection of our countrymen under whatever government they live, remembering also that it is easier and nobler for the strong to be generous than it is for the weak to be submissive."

The speech was reported at some length, as in those days it was the habit of the newspapers to devote considerably more space to political utterances than is the case to-day. It led, therefore, to repercussions far outside Plymouth. Clarke was due to speak at the beginning of October at two great Conservative meetings in the west, but after his

Plymouth speech he was informed that the arrangements for both were cancelled. Editorial comment in the national press was predominantly hostile, in some cases to the point of violence. Meanwhile, in Plymouth the Executive again considered Clarke's position, and asked him for an undertaking that he would vote with the Government when Parliament met. Now Clarke's view was that, since the summoning of Parliament had not been expedited, it would have little opportunity for useful discussion, as by the time it assembled war in South Africa would have begun. When war had started it was his view that "our best hope then will be that by prompt and overwhelming success in arms we may the more speedily arrive at an honourable and lasting peace." Nevertheless, he refused to give the undertaking asked for: "Holding the opinion which I stated last week at Plymouth as to the real cause of this unhappy conflict it is impossible for me to give the pledge for which you ask. I must hold myself absolutely free to vote according to my convictions upon any motion which may come before the House of Commons. It is for my supporters in Plymouth to decide whether they will grant or refuse me this freedom."

His supporters behaved cleverly in a difficult situation, and passed a resolution to the effect that in view of the splendid services which Sir Edward Clarke had for the past twenty years rendered to the Conservative cause and to the best interests of the country, they refused to believe that he would take any action in Parliament likely to embarrass the Government on the Transvaal question. By the time it fell to Clarke to reply to this expression of faith on their part, he was able to reassure them, for war had started, "and honour, policy, and humanity alike demand that it shall be pressed forward with unsparing energy." Clarke's letter was written on October 16th, the day before Parliament assembled, and four days after the start of hostilities. At that time it looked as if perhaps his connection with Plymouth would not have to be severed after all. An amendment, proposed by the Liberals to the Address in answer to the Queen's Speech, altered the situation. The amendment expressed "their strong disapproval of the

conduct of the negotiations with the Government of the Transvaal which have involved us in hostilities with the two South African Republics." Clarke considered that it was most unwise of the Liberals to make an attack upon the Government at the very outset of a war in which rightly or wrongly the country had become involved. It would have been possible for him to keep silence during the debate as he did in fact abstain in the Division which followed it. But as the question of the Government's negotiations with the Transvaal was being raised in the House of Commons he thought that he, whose criticism of them outside had received so much attention, should make his position clear in the House itself. He made his speech in the full knowledge that it would almost certainly entail his resignation as Conservative Member for Plymouth, while silence at this juncture would in all probability allow his difficulties with his constituents to be smoothed over. Knowing this, and valuing membership of the House as only one could who had desired it from his earliest days and had achieved it solely by his own ability and perseverance, he yet resolved to speak.

His speech was remarkable not only as the considered declaration on Conservative policy of an ex-Member of a Conservative Government, and as an analysis of the negotiations by one of the foremost legal minds of the day ; but also on account of the duel which developed between Clarke and Mr. Chamberlain, who frequently interrupted the speech and in Clarke's words "practically offered himself for cross-examination." Much of the controversy centred upon matters that have become only of technical interest such as the question whether the Convention of 1884 had done away with the British right of suzerainty, which had been provided by the convention of 1881. But the main point of Clarke's argument is relevant to every dispute in which minorities claim rights, and will remain important so long as such disputes exist. His argument was that more lasting benefit could have been achieved by a more conciliatory course of negotiations than could ever result from an unnatural and unnecessary war. In this case he contended that the publication of Milner's Dispatches had inflamed

sentiment and excited distrust on both sides. A less abrupt and bellicose approach to the problem would have secured without recourse to war that period of five years' franchise for the Outlanders with which Milner would originally have been content, or a seven years' franchise with an enquiry by a joint commission and arbitration on every other point. This was the gist of the case which Clarke prefaced with the words: "The more I read of the correspondence and the more I study the circumstances, the more I am convinced of errors in the negotiations, and that this lamentable war is absolutely unnecessary."

The speech, however, though uncompromising in its championing of this viewpoint, was neither bitter nor partisan. He agreed that there were grievances in the Transvaal; that the rights of British subjects were not sufficiently respected; and that their interests were endangered by the bad government of that country. This being so, it was the imperative duty of the British Government to use such means as could properly be employed to put an end to the grievances of those subjects and to protect their interests. At the same time he was careful to make it clear that he was making no personal attack upon Mr. Chamberlain, whose promotion of the Workmen's Compensation Act—with which Clarke himself had been actively associated—he ranked as the outstanding achievement of that Parliament. He also acknowledged that in the matter of despatching troops to South Africa the Ministers were entitled to the presumption that they had acted correctly. On the whole question he was firm without being aggressive, "Conceiving it possible," in the words of Cromwell's exhortation to his Parliament, "that you may be wrong." He showed his consciousness of this, reinforced, no doubt, by the knowledge that he was differing from his Party and from the great body of his countrymen in the concluding words of the speech: "No man can know he is right; but he can know whether his opinion is an honest one, whether it is absolutely unbiased by any question of personal interest, or by the more subtle influence of personal antagonism. I know my opinion is an honest one, though it may not be

right. I hope my friends who are now feeling angry and hurt by my conduct may remember that there is a deeper and truer loyalty to the Party than the loyalty which is expressed in the constant going into the division lobby at the bidding of the Whip. I think they will acquit me of any disloyalty to the Party for having, as I have done, striven to prevent my country from suffering the calamity, and my Party suffering the reproach, of having embarked on an unnecessary war."

Clarke was perhaps wise in making this last appeal to the House of Commons, where opinion is sometimes more generous than is the case with politicians outside. In Plymouth the speech was badly received. Although Clarke had not voted against the Government, it was felt by many that his criticisms at such a time amounted to disloyalty to the Government which he had been elected to support. It is true that his action was pleasing to many Liberals both in Plymouth and outside. Many of them would have echoed the words, addressed to him at this time by Mr. Stevens, his first client and old Radical opponent at the Crosby Hall Debating Society: "The lofty and fearless independence you have displayed in the last few weeks has intensified my admiration for you, and I am sure that must be the feeling of everyone whatever his own views on the question may be." With some Liberal support and the backing of his own friends and of those elements among the local Conservatives who did not find any incompatibility between criticism of the negotiations which had led to war and support of the Government in the conduct of war once started, it might perhaps have been just possible for Clarke to have retained his seat. But any such attempt would have meant a split in the Plymouth Conservative Party and the probable surrender of the seat. Representations were made to him as to the difficult situation in which Plymouth Conservatism would find itself, and on November 25th Clarke intimated that he would not seek re-election for Plymouth again. Those who had best reason to know of Clarke's services to Plymouth in the two decades of representation regretted the decision and questioned its necessity; but it speedily

appeared that the mass of the electorate, swayed by the immediate consideration of his unorthodoxy on the South African issue, accepted his decision as the appropriate and inevitable step for one in his position to take. Quite soon it was suggested that it would not be right to wait for the General Election as advantage should be taken of the strong bias of public opinion towards the Government to secure the election of the new Conservative candidate in a by-election. The strength of this proposal was in no way diminished by the purport of Clarke's last speech in the House of Commons which was made in February, 1900. This time he declared his intention of voting for the Government, but qualified his support of the Government's conduct of the war by the suggestion that the Prime Minister should himself take charge of the correspondence of the Colonial Office with South Africa, and that Lord Rosebery should be sent out to South Africa to assist in promoting a solution of the trouble. This suggestion was naturally interpreted as a slight upon Mr. Chamberlain, the political hero of the hour, and gave considerable offence both in Plymouth and elsewhere. The time seemed to have come for Clarke and his constituents to part, the more especially as a recent by-election at Exeter had reinforced the Conservative hopes of victory in a by-election. On February 9th, exactly one week after his last Parliamentary speech, Clarke was asked to resign his seat. The following day he applied for the Chiltern Hundreds, and his long period of unbroken membership of the House came to an end.

It cannot, of course, be decided in these pages whether or not Clarke was right in the attitude which he adopted towards the Boer War. The question will always remain one of interest so long as the rights of minorities remain a political issue. It is not altogether fanciful to see a parallel between British intervention with the Boers on behalf of the Outlanders and the events which gripped Europe in the late summer of 1938. Clarke was certainly right in his insistence that a negotiated settlement is always preferable to one that is dictated. That the British Government came to appreciate this point of view is evidenced by the wise and

conciliatory methods which they adopted in the hour of victory. If the Boer War was an unjust war, it left behind the smallest legacy of bitterness, hatred, and revenge, of any unjust war in history. Clarke considered that a just and honourable settlement could have been achieved by negotiation without a war. This proposition is, of its nature, insusceptible of proof. Where Clarke perhaps judged faultily was in his belief that the greater part, if not all, of the intransigence was on the side of the British Government. For in fact Kruger himself was far from conciliatory. In 1899 British prestige in arms was not particularly high. The Crimea was half a century ago, and Waterloo near a century. Much closer, and much more real to the Boers, was the British defeat at Majuba Hill. Clarke complained of the British anxiety to avenge Majuba Hill. But the British were not the only ones to attach importance to Majuba Hill. The Boers judged of the competence of British arms in the light of that defeat. Many Liberals and a few Conservatives of whom Clarke was one, pictured the Boers as a virtually helpless community, whose choice lay between compliance and defeat. The Boers did not share this view. As a warrior nation, trained to fight in the peculiar conditions of their own country, they felt far from helpless against a nation whom they conceived to be unmilitary in character, ignorant of the conditions, and fighting hundreds of miles from their base. There was not, therefore, that eagerness for reasonable settlement, as the only alternative to defeat, with which Clarke credited them. It may be that the impartial and informed verdict of history will record an insufficient lack of pacific intention on the part of the British people and its Government at that time ; but it does not follow that it will find that even greater efforts on their part could have avoided war.

This much can be said with certainty. When the temper of a people is for war it is never an easy, nor is it a grateful thing, to urge moderate counsels. To do so, in face of the considered wisdom of one's own party, is still harder. In coming to his decision Clarke must have known that he was not only imperilling his political career : he was incurring

the risk of odium and the possibility of economic loss. His friends did not shun him ; but they might have done. His practice did not suffer ; but it might have done. All these risks he accepted without question, without hesitation and without any sense of martyrdom. If any had doubted his moral courage or his intellectual integrity, they must needs have been convinced in the autumn of 1899.

CHAPTER XVI

THE GOLDEN YEARS

CLARKE'S retirement from Parliament involved the suspension of the political activity in which he had been engaged, both in Parliament and out, for over thirty years. He was temporarily severed from connection with the Party, but had no wish to put himself in opposition to a Government, still involved in the conduct of war, which commanded his support on other questions of policy. No man could but have felt his position in leaving Parliament thus abruptly after twenty years of uninterrupted membership. But it bore less hardly on Clarke than it would have done on a professional politician, to whom absence from the House of Commons would mean almost total inactivity. Clarke, on the other hand, would not have had the time to brood over the disappointments attendant on his political life, even if he had had the inclination to do so. Five years previously he had refused Law Office on the conditions attaching to it, and in consequence his private practice at the Bar had considerably increased. In 1900 the severance—final as it appeared at that time—of his political connections, still further increased his desirability in the eyes of solicitors and those contemplating litigation. The result was that the three years following his retirement from politics comprised the period of his most active practice at the Bar. It is true that in the course of this period he passed his sixtieth birthday. It is true that it was a period in which many of his old friends and competitors at the Bar had moved forward to judicial or official position. On Russell's early death, Webster became Lord Chief Justice, and marked the occasion by giving a present to Clarke, writing at the same time to tell him "how truly I regret that the course of my career should (as I know it has) have interfered with your views. . . . I know there is not a particle of jealousy in your disposition and I value your

friendship as one of my greatest privileges." A. L. Smith, whom Clarke had recommended for the position of Treasury Counsel, when he had himself refused it over twenty years before, had become Master of the Rolls—a position which Clarke had refused in 1897. Others of his contemporaries and juniors were sitting on the Bench as Puisne Judges. Clarke was, therefore, in the position of having frequently to conduct his cases before those who at the Bar had been his equals or accounted his inferiors. But private practice had its consolations, some of which took an unmistakably tangible form. As a Judge he would have drawn a salary of £5,000 a year; as Master of the Rolls his salary would have been £6,000; as Lord Chief Justice he would have been entitled to £7,000. As it was, in the three years following his retirement from Parliament he aggregated £68,000 in legal earnings, reaching his peak in 1902 with earnings of close on £27,000. If, therefore, he ever had the leisure in which to regret his position, he could be certain that many would think their highest ambitions realised if they could have had only one year of his habitual practice.

It may be of interest to compare his earnings with those of some other masters of the Law. Coleridge, later Lord Chief Justice, once made over £19,000 as Attorney-General, thus just failing in his ambition to make £20,000 in a year. The most that Jessel made was about £18,000. Hawkins was said to have made £22,000 in a year. Carson in private practice was making £13,000 when he became Solicitor-General. Birkenhead once made £23,400. The most striking point about Clarke, however, was the long span of his earnings: during fifty years' practice at the Bar he averaged nearly ten thousand a year, which made his total professional earnings nearly half a million. The authors incline to the view that in total earnings at the Bar this figure has never been exceeded and is unlikely to be.

Clarke received an early indication of how little political circumstances and rancours could affect his legal position, when within a few months of his applying for the Chiltern Hundreds he was briefed for the plaintiff in the case of *Chamberlain v. the Star*. In spite of the fact that Clarke

had been one of the most prominent and effective critics of Mr. Chamberlain in his conduct of the negotiations with the Boers, he was briefed as Leading Counsel in the libel action brought by Mr. Arthur Chamberlain, brother of Mr. Chamberlain, against the *Star*. This action had a strongly political complexion, for it arose out of allegations that political pressure had been brought to bear in securing Government contracts for cordite. Now one of the principal firms engaged in the production of cordite was Kynoch's, of which Mr. Arthur Chamberlain was Chairman. This firm had received certain preferential treatment from the Government, which was subject to strong criticism in Radical circles. As a result, a Select Committee of the House of Commons was appointed to investigate the position, and reported that the Government had acted properly in the national interest, since it was necessary to maintain the firm of Kynoch's in being against the contingency of war. The *Star*, on the other hand, was disposed to take the view that Kynoch's might owe its favourable position to the fact that Mr. Chamberlain was Colonial Secretary and his son, Mr. Austen Chamberlain, Civil Lord of the Admiralty. So strong did these suggestions become in some Radical circles that Mr. Chamberlain announced in the House of Commons in August of 1900, that he had no interest, direct or indirect, in Kynoch's, or in any other firm manufacturing ammunition or war materials. Substantially his denial was correct, and, of course, entirely correct, so far as he knew. He had, however, a handful of shares in the Birmingham Trust Company, 10 per cent. of whose capital was invested in Kynoch's. The discovery of this fact led to a renewal of articles in the *Star*, and the Chamberlains decided that proceedings must be brought. Mr. Chamberlain was anxious to bring a libel action himself, but he was advised that the wording of the articles did not constitute a libel upon him. Consequently, Mr. Arthur Chamberlain took proceedings to vindicate the family honour, alleging that the suggestion of the articles was that he had brought family influence to bear to obtain Government contracts for cordite on advantageous terms.

The *Star* relied on a plea of fair comment, and battle was joined in March of 1901 before Lord Alverstone, which was Webster's new designation. The *Star* was represented by Rufus Isaacs, then rapidly coming to the fore as a Silk, and by the future Lord Justice Bankes. Mr. Isaacs naturally endeavoured to get the case on a political basis, suggesting that the *Star* was concerned to attack not an individual, but an unsatisfactory system. It was, therefore, in his view, a matter of great public importance, which must be dealt with "broadly and in a public spirit." As for Mr. Arthur Chamberlain, his commercial reputation was so firmly established that the attack could not possibly have done him any harm. Clarke was too old a hand to allow himself to be drawn off into the wider field of controversy thus opened up by Mr. Isaacs, and he insisted that the jury were concerned not with questions of public policy, but with the reputation of a private individual. "The suggestion is that the assault was intended to be directed against Mr. Joseph Chamberlain and Mr. Austen Chamberlain, and that if Mr. Arthur Chamberlain was hit in the attack that was because he enjoys the privilege of being Mr. Joseph Chamberlain's brother and he must always remember as a consolation that his brother is in the Cabinet." As to Mr. Isaacs's theory that no harm could have been done to Mr. Arthur Chamberlain, if it were borne out in practice, "the only people who could ever get damages for libel are shady financiers and ladies with a past, and they are entitled to recover damages in order to set up a somewhat damaged reputation." The result of the case was an award by the jury of £200 damages. The amount was not large in itself, but, of course, it was not money which Mr. Chamberlain wanted, but the complete vindication of the honour of himself and his family, which the verdict carried with it.

Another and perhaps more striking example of the way in which Clarke's legal pre-eminence completely overshadowed his attitude to the Boer War even in quarters where it might have been supposed that the prejudice against him on that score might have been strongest is afforded by the fact that

Sir Redvers Buller, back from South Africa, took his affairs to the man who had opposed the War. Clarke conferred with him, and finally forwarded his advice in a letter, the acceptability of which is shown by the terms of the reply :—

“ Downes,

Crediton.

October 1st, 1902.

Dear Sir Edward,

Your very kind letter reached me at Fannich yesterday evening. I am deeply grateful to you for having given my affairs such serious consideration during the vacation.

I will certainly accept your advice, and will for the present do or say nothing ; and if it is not impertinent I may add that I accept it the more readily because it is advice which I entirely agree with . . . ‘ patience and perseverance with a little sweet oil will polish a blanket.’ Unfortunately, it is, I know, the sweet oil that I am apt to be niggardly with, a small matter in me that requires special perseverance. . . .

Yours very truly,

REDVERS BULLER.”

Another case arising out of the Boer War was the slander action brought by Messrs. Wernher, Beit and Eckstein against Mr. Markham, the Liberal Member of Parliament. A fortnight before Clarke opened the case for the plaintiff in *Chamberlain v. the Star*, Mr. Markham made an attack on the firm in the House of Commons. All statements made by a Member in the House are protected by the absolute privilege accorded to Parliamentary proceedings. Mr. Markham, however, being challenged to repeat his accusation outside, did so in a most obliging manner. Speaking at the Victoria Hall, Mansfield, he said : “ I charge Mr. Arthur Beit and Messrs. Eckstein with being thieves and swindlers in connection with the part they have played in financial operations in South Africa.” This afforded Messrs. Lewis and Lewis the opportunity of serving a writ for slander. Mr. Markham’s advisers pleaded justification of the charge, and, as is customary, delivered particulars in support of it.

One paragraph of the particulars alleged that in 1895, i.e. at the time of the Jameson Raid, the plaintiffs had been instigators of acts of armed hostility against the South African Republic. Now the rule is that each party to litigation must disclose all documents relative to the issue in the trial. The raising of this issue would have involved the disclosing of certain telegrams which had passed between London and South Africa, and between Cape Town and Johannesburg, at the time of the trial ; and such disclosure was considered inconvenient for other parties besides the Plaintiffs. In this dilemma they sought the advice of Clarke as to what was best to be done. He advised an application to strike out this paragraph as irrelevant to the real issue, since the charge made by Mr. Markham in his speech related to the financial, and not the political, operations of the Plaintiffs. The application was heard, according to custom, by a Master. He refused to strike out the offending paragraph, and this decision was upheld by the Judge, to whom the Plaintiffs appealed. There was still, however, the Court of Appeal, and to this final tribunal Clarke carried his argument. This time it prevailed over that of Mr. Isaacs, who was Counsel for Mr. Markham, and the Court ordered the paragraph to be struck out. The situation was saved, and, in fact, there was no hearing of the action itself, for Mr. Markham withdrew his charges and apologised. The case is a good illustration of the importance of the preliminaries, or "interlocutory" proceedings as they are technically known in Actions of Law. It very often happens that such manœuvring for position affords the best opportunity for the exercise of forensic skill, and the public, who follow with fascination the hearing of a *cause célèbre*, are generally unaware of the importance to a final result of the tactical strategies which have preceded it.

Not all of Clarke's cases were concerned with high politics and high finance. His range was wide, and the cases in which he was involved touched Life at many and varied points. Amongst other litigation in which he was concerned was the famous Racecourse Arbitration of 1901. In this arbitration his clients were unsuccessful, but two years later

he was asked by the Jockey Club to suggest improvements in the Rules of Racing, and the alterations and additions recommended by him duly received their approval. His interest in such work was professional, for Clarke was not a racing man. Frequently, however, he was asked to advise or represent men of Letters or men of the Theatre, and there his professional interest coincided with the interests of his private life. Literature and the Theatre were two of his abiding passions throughout a long life, and it is remarkable that the great pressure of his legal and political work never prevented him from enjoying the companionship of his theatrical friends or reduced his pleasure in the Drama. He was on terms of intimate friendship with Sir Henry Irving, Sir Squire Bancroft, Sir Herbert Beerbohm Tree, Norman Forbes, and many others of the theatrical world of those times. In addition to attending the Theatre whenever time allowed, he also gave financial backing to many plays, and in various ways did what he could to help and encourage the Drama. His liking for theatrical and literary company found expression in his membership of the Garrick Club, where from time to time he resorted, always with pleasure, though not perhaps as frequently as he would have wished. Only a few weeks after his retirement from Parliament Sir Herbert Beerbohm Tree invited Lady Clarke and him to attend an opening performance at Her Majesty's Theatre and to dine at the Carlton on the following Sunday, adding that he would like "to take this opportunity of assuring you of the high esteem in which I—in common with all who have the privilege of coming within the sphere of your fine character—have always entertained for you. And I know that the action which you have lately taken was dictated by a high conscience which is too little regarded in public affairs. This will be admitted by those who like myself do not share your views on the war question."

This was not the first night which Clarke recalled as one of the most amusing of the many at which he was present. That occasion was the first night of "The Last Days of Pompeii" at the Queen's Theatre in Long Acre. At that time Henrietta Hodson was in the prime of her exceptional

grace and beauty, and it was known that Labouchere was spending large sums of money on the production of the play. The house was crowded and the opening scenes went very well. The scenery was good ; the cast very strong, and the Nydia absolutely charming. But, unfortunately, in one of the principal scenes there was an accident. It was the interior of a Pompeian villa. The guests were reclining on couches and at the back of the stage was a lofty and spacious portico across which a slackened cord appeared. Presently the talk was interrupted by the entrance on the cord, with a long balancing pole in his hand, of a man dressed in something like the costume of a modern acrobat. He made several graceful steps along the cord, caught his long pole in the scenery, tottered, fell over and came down with a crash. The house rang with laughter, the players did not know what to do or say, and from behind the scenes came the strident tones of Ryder, who was giving the unfortunate man a bit of his angry mind.

The laughter had hardly ceased when he appeared again and was received with shouts of applause as this time he came without his pole. He reached the middle of the rope, smiled and bowed, tried to cut a flip-flap, came down heavily on the floor, scrambled off the stage and was seen no more. Miss Reinhardt, perhaps in fun, spoke her next line, " He is indeed a wonderful performer," and actors and audience shook with merriment. After that it was difficult to be serious. Presently came a scene in which Glaucus has the misfortune to let fall and break a marble image of Fortune. It was a tragic omen, but the gallery shouted " Butter-fingers ! " and screamed with delight. Much of the play was so beautiful that it was greatly enjoyed, but later on came the scenes in the arena. Then the house broke loose. When the imitation roaring of lions was heard from the wings they shouted " Bring them on " ; an unfortunate man who came on with a net and trident was accepted at once as a genuine comic artist. But the great triumph was that of the wrestlers. Labouchere must have picked up some street acrobats from the Old Kent Road. They dodged for a while, then struggled fiercely, and in two minutes one was

standing on his head on the top of the other's shoulders. And then the play ended with what Moy Thomas called an "eruption of Vesuvius."

It would have been surprising if the subject-matter of Clarke's legal work had not sometimes been Literature or the Theatre. On one occasion he was briefed to represent Sir Henry Lucy, famous to more than one generation as "Toby M.P.," for whom he obtained a very satisfactory settlement of his case. Another client whom he advised was Wilson Barrett, the actor, who was also a friend of his. In 1900 he was briefed for Herman Merivale, the actor and dramatic author, in the action which he brought against Martin Harvey for breach of contract in respect of production of a play. Mr. Merivale had also written a burlesque on Mr. Martin Harvey, which provoked him to a counter-claim for libel. Clarke was successful both in establishing a breach of contract and defeating the claim for libel. After the case Merivale in writing to thank Clarke alluded to the possibility of his having in certain circumstances "to chaff" Martin Harvey again. Clarke promptly wrote and advised him to do no such thing. This advice Merivale accepted, though a certain reluctance is apparent in his words "the Popes and Garricks, the Gibbons and Goldsmiths pelted each other with such things, and no one was ever a penny the worse." Merivale was actually a barrister, though not a practising one; but his view of libel was decidedly that of the author rather than that of the lawyer. In many cases such as this Clarke accepted a small or nominal fee, which actually involved him in loss, since his conduct of such cases probably prevented his acceptance of other briefs marked at the rate which he could command. In this case, Charles Matthews, who was Merivale's Junior, said that it was a matter of proud remembrance "that I was able to procure for a brother barrister and a man of Letters everything which money could command in a service so brilliantly rendered as that no money could pay for it." Shortly after this Clarke was again successful on behalf of an actor, this time being briefed for a comedian, Lionel Rignold, in his action for wrongful dismissal. Rignold, playing the part of

Pineapple in the preliminary provincial tour of "The Chinese Honeymoon," inserted various gags which were greatly to the taste of the provincial audiences. When the play came to London, he was ordered to excise the gags on the ground that their vulgarity might offend the more sensitive susceptibilities of a Metropolitan audience. Unfortunately, the elimination of the gags produced a sharp decline in the box office receipts. Rignold then received a revised list of gags which he assumed had been passed by the proprietor of the theatre. On using these, however, he was informed that he was a cad and dismissed from his part. For this grave wrong Clarke was able to secure a sum of £400 for the injured comedian.

It was at about this time that Clarke received a general retainer from the *Daily Mail*. The Harmsworth brothers, like the Chamberlains and Sir Redvers Buller, did not allow their differences with him on public questions of policy to stand in the way of securing his services as an advocate. The *Evening News* had referred to Clarke's opposition to the Boer War as being due to "the chagrin of a disappointed man," and Mr. Alfred Harmsworth, as the future Lord Northcliffe then was, at once wrote to the Editor a letter for publication in which he stated that this view was completely erroneous, with the additional comment that "it is not a grateful task to place oneself, as Sir Edward Clarke has done, in opposition to one's own Party and to nine-tenths of the public opinion of the country." The admiration which Mr. Harmsworth had conceived for Clarke's character extended also to his abilities, and Clarke appeared in various cases for the Harmsworth Press, notably in libel actions brought against them. One of these cases was that in which a leading actress of the day, Miss Hetty Chattell, was the plaintiff. The *Daily Mail* published a photograph of the celebrated Miss Rosie Boote, who, like Miss Chattell, was about twenty-eight years of age. Underneath this photograph was the caption: "Miss Rosie Boote, whose name is frequently before the public just now, is the daughter of Hetty Chattell, the principal boy in the Hippodrome Pantomime." Miss Chattell issued a writ

upon which the *Daily Mail* inserted a paragraph apologising for their obvious mistake, and stating that, though it was customary for many well-known actresses to perform under their maiden name, Miss Chattell was known by her friends and admirers to be unmarried. To the legal mind the sting of the libel lay in the suggestion that an unmarried lady might have a daughter : to the theatrical mind it was equally offensive to suggest that a lady, who was actually only twenty-eight, could possibly be of an age to have a grown-up daughter. Mr. Marshall Hall was briefed for Miss Chattell, and the solicitor for the *Daily Mail* asked for three weeks in which to deliver a defence. At the conclusion of the three weeks no defence was delivered, and the case went to the Court solely for the purpose of assessing the damages due to Miss Chattell. At this stage of the proceedings it had not been thought necessary to brief Clarke, but the case took an unexpected turn. Mr. Marshall Hall in an impassioned speech declared that the reason why the *Daily Mail* had wanted the three weeks was in order to scour the country to see whether they could find out anything discreditable to Miss Chattell before deciding whether or not to deliver a defence. So well did his tactics succeed that the jury awarded Miss Chattell £2,500 damages, which exceeded by £1,500 the amount claimed upon the writ. Mr. Harmsworth was extremely angry, not so much at the amount of the damages, as at Mr. Marshall Hall's method of conducting the case. He at once took himself off to consult with Clarke, who advised that an appeal would succeed on the ground that the jury had been inflamed by Mr. Marshall Hall's method of address, and had in consequence awarded damages that were absurdly high. So that there should be no mistake about it, Mr. Harmsworth caused four other Counsel to be briefed in addition to Clarke, including Mr. Horace Ivory. Clarke had little difficulty in persuading the Court of Appeal of the justice of his plea, and the hearing was chiefly notable for the scene between Mr. Marshall Hall and Lord Justice Mathew, and the sternness of the terms in which the Court reprimanded Mr. Marshall Hall.

Clarke was also Mr. Marshall Hall's opponent in the other

case in which the latter came to grief at about this time. This was a case in which Mr. Marshall Hall appeared for the former secretary of an English baronet, against whose widow an action was brought to recover payment for services rendered by the secretary in spying on his former master in order to collect information about his relations with another lady. Clarke was briefed for the widow, who was by birth an American. In resisting such a distasteful claim as this, Clarke could be certain of the sympathy of the Court. In such a case Clarke would rely primarily on the effect of his cross-examination of the plaintiff, whose position was peculiarly vulnerable, and on his power to expose the vagueness of the terms of the alleged contract. This being so, it was probable that he would not need to put his client in the witness-box at all. Now Mr. Marshall Hall had received in his instruction certain suggestions about the defendant, which it was thought that he might be able with advantage to put to her in cross-examination if she went into the witness-box. In the absence, however, of any admission by the defendant under cross-examination, there was no evidence whereby to prove the truth of the allegations. It is a salutary rule in legal proceedings that Counsel may not make any allegations which he is not able to prove. In spite of this, Mr. Marshall Hall referred to these allegations in his opening, on the assumption that Clarke intended to call his client. But Clarke was much too experienced a tactician to put his client in danger if he felt reasonably certain that he could win his case without the help of her evidence. After a very successful cross-examination, therefore, Clarke announced that he intended to call no evidence and criticised Mr. Marshall Hall's conduct of his case. "It is rather sad," he said, "that the plaintiff is able to find a mouthpiece in Court, and in the row of this Court which I occupy, to make such statements, with the object of inducing the defendant to give way, and pay the plaintiff something rather than fight the matter out." This was tantamount to the suggestion that it was a blackmailing action, brought not on account of the intrinsic merits of the claim, but because the plaintiff had reason to think that the defendant might prefer

to pay rather than have these allegations against her character canvassed in the Court. Mr. Marshall Hall bitterly resented this suggestion and the force of his eloquence persuaded the jury to find a verdict for the plaintiff. On hearing the verdict, the defendant protested loudly that she had been anxious to give evidence, and attributed her defeat to the action of her Counsel in not calling her into the witness-box. An application was made to the Court of Appeal for a new trial, but in this application both Clarke and his opponent preferred not to appear, because the personal conduct of both of them was called in question. The Court had to decide two questions : first, had Sir Edward Clarke been guilty of misconduct in not calling his client into the witness-box contrary to her instructions ? and, secondly, had Mr. Marshall Hall been guilty of introducing scandalous and irrelevant matter into his opening of the case ? In answer to the first question, they found that Clarke's action was within the legitimate exercise of his discretion as Counsel. In answer to the second, however, they found against Mr. Marshall Hall, and endorsed Clarke's view that the action on the face of it was a blackmailing one. Once again Clarke had triumphed over Marshall Hall in the Court of Appeal ; and once again Mr. Marshall Hall was seriously damaged in consequence. The late Mr. Marjoribanks has described in his " Life of Marshall Hall " how damaging was the effect of these repeated rebuffs and criticisms in the Court of Appeal to Mr. Marshall Hall's practice. A letter written by him to Clarke on the occasion of a dinner given to Clarke to celebrate his fortieth year in practice, and not quoted in Mr. Marjoribanks's " Life," indicates the state of mind induced in him by these events : " There was a time, not so very long ago, when I had begun to hope that some day I might attain to some measure of the success which you have achieved as an advocate, but I fear those hopes have had to be abandoned. It may be to some extent my own fault that I have missed my chance, but I cannot help thinking that there is now no such scope for advocacy as there was a little time ago, and I am quite sure that some of the judges, never having been in any sense advocates themselves cannot

appreciate either the difficulties or the successes of the advocate."

This letter is not without interest, coming from one, most of whose great forensic triumphs lay far in the future.

Not a great deal of Clarke's work at this time lay in the Criminal Courts, for his preoccupation with cases elsewhere forbade his attendance save on occasions of special difficulty. Sometimes he was briefed to represent clients for whom conviction would entail not only the penalty inflicted by law but also social eclipse. One such case was the famous prosecution in 1902 of Mrs. Penruddocke by the National Society for the Prevention of Cruelty to Children. Mrs. Penruddocke was the wife of a local Justice of the Peace, living at Cumpston Park, Salisbury, and she was charged with the ill-treatment and neglect of one of her children. The charges occasioned great excitement, and such was the local hostility towards Mrs. Penruddocke that the case had to be removed from the Wiltshire Assizes, where it would normally have been tried, to the Old Bailey. Clarke was briefed for Mrs. Penruddocke, to lead one K.C. and three Juniors; one of the Juniors was Mr. John Simon, then just beginning to establish for himself that reputation for extraordinary forensic ability which in less than ten years was to carry him to the Office of Solicitor-General. When the case came on, Clarke did his best to whittle away the substantial body of evidence called for the Prosecution. In his speech he claimed that no Act of Parliament had taken away the right of a parent to inflict a reasonable chastisement upon a child, and he argued that whatever had been done in this case had been done merely in proper correction of the child. He was able to secure the acquittal of his client on one count, but was unable to prevent conviction on the other two. The Judge, however, took a lenient view of the case and imposed a fine instead of sending Mrs. Penruddocke to prison.

In the same year Clarke appeared for a much more exalted personage in a strange case. Prince Victor of Braganza, a youthful member of the Royal House of Austria, had come over to England in company with his elder brother for the festivities attendant on the Coronation of King Edward VII.

On the night of their arrival the two brothers parted after an excellent dinner, during which a considerable quantity of wine was consumed, and the young Prince Victor betook himself to the Empire promenade, a favourite resort of the mashers, bucks and dandies of Edwardian times. From there he went to have supper and more champagne, and on emerging in a slightly bemused condition was accosted by two youths whom he supposed to be the sort of touts employed by houses of accommodation on the Continent. The two boys took him back to the rooms in which they lodged, and there he fell asleep. He was awakened by a commotion, and arrested at the instigation of the landlord of the house, who stated that, looking through the key-hole into the room, he had observed the Prince engaged in indecent practices with one of the boys. Prince Victor was charged at the Police Court, and Clarke was hurried down to defend him with a very large fee on his brief. Prince Victor was committed for trial at the Old Bailey, where again Clarke was engaged to defend him. The issue depended primarily on whether or not the evidence of the landlord could be believed, and this in turn depended on whether it would have been physically possible for anyone looking through the key-hole to see what was happening on the bed. With the aid of plans of the room drawn to scale, Clarke was able entirely to discredit the landlord and to secure the triumphant acquittal of the Prince. After the verdict the Recorder explained to the Court that the Prince had supposed that he was being conducted to a brothel in a manner customary on the Continent. On hearing this, the crowded court burst into loud applause, though whether this was due to relief at this testimony to the normality of Princes, or to gratification at this confirmation of their belief as to Continental habits, it would be speculative to say.

The end of 1902 found Clarke simultaneously engaged in two cases which attracted great public attention. Alike in this they were widely divergent in all else, for one was the Taff Vale Case and the other the Hartopp Divorce Case. The Taff Vale Case was a landmark in Trade Union History, for it was the decision in it which led to the Trades Disputes

Act of 1906, which gave to Trade Unions an especially favourable treatment under the Law. The case arose out of a strike of railwaymen in the Taff Vale in August of 1900. In consequence of this, the Taff Vale Railway Company brought an action for damages against the Amalgamated Society of Railway Servants. It was, however, widely believed at that time that, since the Trade Union Act of 1871, it had not been possible to sue a Trade Union. Certainly the attempt had not been made for some time, and the Society, relying on this supposed immunity, applied to be dismissed from the action. Consequently, the action was divided into two parts : first as to whether the company could legally sue the Society at all, and, secondly, if they could so sue, whether on the facts they were entitled to damages. Clarke was briefed to argue the case for the Railway Company. The argument of Counsel for the Society was that as a Trade Union was neither an individual nor a corporation, nor yet a partnership between individuals, there was no legal capacity in which it could properly be sued. The answer to this was that the legislature may nevertheless give to an association of individuals, which is none of these three legal entities, the capacity to own property and to act by agents. This capacity carried with it, to the extent of that property, liability for the acts of the Trade Union's Agents ; and in respect of such acts Trade Unions, having been given such a capacity by the Acts of 1871 and 1876, could properly be sued. This latter contention carried the day in the Court of first instance, only to be overturned in the Court of Appeal. The Company then appealed to the House of Lords, where Clarke's argument finally prevailed over that of a future Lord Chancellor, Mr. Haldane, who appeared for the Society. The case was then remitted to a Court of the King's Bench Division for argument on the facts, and this time Mr. Rufus Isaacs was entrusted with the leading brief for the Society. Clarke again led for the Railway Company, and after a stern fight succeeded in securing a judgment of £23,000 for his clients.

The decision on the legal question in the Taff Vale Case affected the whole of the organised labour of the country and

indirectly most other citizens as well. The decision which had been given with all solemnity by the Lords of Appeal in the House of Lords was canvassed in simpler terms and more robust expletives on every husting in the country. The matter became a political issue of the first magnitude, and one of the earliest legislative Acts of the Liberal Government of 1906 was to give to the Trade Unions that immunity from being sued, which Mr. Haldane's argument had unsuccessfully claimed for them in the House of Lords.

The Hartopp Case could lay no claims to such universality of interest. It was set in the same *milieu* as the Baccarat Case ten years previously. Indeed, there was a personal as well as a social link with Tranby Croft because Lady Hartopp, the respondent in this case, was the daughter of Mr. Charles Wilson, M.P., subsequently Lord Nunburnholme, and a connection of Mr. Arthur Wilson of Tranby Croft. Lady Hartopp had emerged some years previously from her débutante state, in which she had been famed as a beauty, to marry an easy-going baronet, fifteen years her senior, whom she called "Bundle" on account of his figure. Sir Charles, after some six years of marriage, petitioned for divorce on the grounds of his wife's adultery with Lord Cowley, a gentleman with whom she had entered into friendship on the hunting-field. Lady Hartopp defended the suit, and also counter-petitioned for divorce on the grounds of her husband's cruelty and adultery with "a very beautiful woman living apart from her husband and known to be accessible to gentlemen who are prepared to pay somewhat heavily for her favours." Lady Hartopp's advisers, prompted, perhaps, by the reflection that the Baccarat Case had shown that it was better to have Clarke as friend than as foe, briefed him to lead for her in collaboration with Mr. Inderwick, K.C. Altogether seven Silks were briefed in the case, which lasted for thirteen days. Approximately £15,000 was spent in the costs of the trial, Clarke leading the way with a brief fee of five hundred guineas and a refresher of one hundred guineas a day. In spite of all this aggregation of legal talent, and in spite of the fact that all Debrett and his staff gave evidence, the result was a

complete retention of the matrimonial *status quo*. Clarke and his team had no difficulty in demolishing the unstable structure of their opponents' case with regard to Lady Hartopp's adultery; but their own case with regard to Sir Charles was based on a foundation even more flimsy than that of their opponents. So it was that the case, after providing rich rewards for Counsel and attracting daily the usual eager throng of sightseers, snobs, and social gossips, left the Hartopps still joined together. In 1905, however, their marriage was dissolved, and Lady Hartopp was free to marry Lord Cowley, whom she in turn divorced some eight years later.

It is not for Counsel to choose the facts of the cases in which they appear. But one thing can be said with confidence of busy Counsel; they are touching life at many points and in many aspects. Rich and poor, good and bad, serious and trivial—the fortunes and complications in the lives of all are liable to come their way. For all his long legal life Edward Clarke had his full share in this contact with the lives of his fellow citizens. During the opening years of the century he had a share so large that he would willingly have been content with less. He had reached the position sometimes attained by the greatest leaders of the Bar, when all sorts of clients pressed eagerly and simultaneously for his professional services in all sorts of cases. In sheer self-defence a man in such a position has to charge a high rate for his services, although Clarke's fees would not appear particularly large in comparison with those sometimes charged by Counsel of his standing to-day. It follows that the large income earned during these years entailed an enormous burden of work, which could not have been satisfactorily discharged by a man in his sixties in conjunction with political activities, nor continued for long by him without grave danger to his health.

CHAPTER XVII

POLITICAL INDIAN SUMMER

THE great volume of work which came Clarke's way in the opening years of the new century did not entirely occupy the time which had been set free by his release from Parliamentary duties. He was able to give his vacations to foreign travel, to which, coming late in life, he became greatly attached. Italy, Egypt, Algeciras, and Spain were some of the places which he and his wife visited, while in 1903 he went, together with his son Percival, on a semi-official visit to Canada. These trips were not only matters of great enjoyment but necessary for his health, which was subjected to considerable strain by the amount of Court work in which he was engaged. The year 1902 saw the peak of his legal practice. Thereafter it declined, not least because he wished it to do so. After 1902, in the interests of his health and because he did not wish to become exclusively absorbed in legal work, he began to refuse many briefs, not on the grounds that they did not carry sufficient reward but simply because he was not willing to add to the amount of his work. It quickly became known in professional circles that he was adopting this course, and it was widely and not unnaturally rumoured that he was contemplating retirement. This was not, in fact, the case, as his earnings in 1903, though falling short of the level which they had attained in the preceding years, still amounted to rather over £15,000. In 1904, however, such rumours obtained an emphatic though unintentional endorsement from the complimentary dinner which was given to Clarke to celebrate the completion of his fortieth year at the Bar. The dinner itself did not occupy quite the same high place in Clarke's recollection as that dinner given him on his retirement, which in 1904 lay in the future. It did, however, have the effect of accelerating his initial retirement,

since it seemed to confirm his intention to retire. The influence in this direction can be seen from his fee book, which shows earnings for 1905 of only £5,593, or about a quarter of what they had been three years previously. This falling off was considerably sharper than Clarke had desired or anticipated when he began refusing work on a large scale in 1902. His experience illustrates the difficulty of adjusting an income at the Bar. Those who are not overworked are for the most part underworked; and those who are overworked cannot dispense with any substantial portion of their practice for fear of losing more than they intend. This second fate was the one which in some measure befell Clarke in 1905.

Though Clarke was surprised by the rapid declension in his practice, he was able to be quite philosophic in accepting it. He was now in the sixties, and his heavy earnings of the last few years had, despite free spending, to all appearances provided for the future. He had also held the pre-eminent position at the Bar for so long that he had almost outlived his generation in active practice. Some of those who had started with him were already dead, including some of the foremost like Russell and Lockwood; others had fallen out or retired; others again had been promoted to judicial office, so that he appeared before many with whom he had been used to contend in the Courts. By 1905 the practice of advocacy could hold little for him either of service or of fame or of reward which had not come his way already. The call of the political life, never wholly dormant in his breast, was beginning to reassert itself in strength. While the South African War had lasted, his return to the House of Commons was impossible, for the long duration of the war intensified the bitterness of those, who at the beginning had been facile optimists, against their more far-seeing critics. But after the signing of peace in 1902 his chances became quite good, the more so as the Government intended to crown victory in war with the policy of conciliation, which—whether practicable or not—Clarke could fairly claim to have urged before the beginning of war. With this new feeling in the country, Clarke again captured

the attention of the political organisers. He had this advantage over other politicians in retirement, that, whereas retirement spelt for them obscurity, his political retirement had increased rather than diminished the frequency with which his name was advertised to the public as participating in cases of public interest. That large number of constituencies which seeks the distinction and experience of age rather than the vigour and promise of youth, could not but be attracted by a sexagenarian who had filled the office of Solicitor-General and was still at the top of his profession. The first political approach made to him came, curiously enough, from the naval constituency of Portsmouth, where it might have been expected that opposition in Conservative circles to his views on the Boer War would have persisted longer than elsewhere. The offer from Portsmouth was refused, but was followed up in 1903 by a request to stand at the next General Election as colleague to his friend Mr. Gerald Loder at Brighton. This offer Clarke accepted and was duly adopted as prospective candidate.

At the time of his adoption, Clarke, in common with many other people, expected an early General Election. But the Conservative Party was divided against itself. The Tariff Reform League, which contained many of the most vigorous spirits in the Party, had not been able to dominate the entire Cabinet. In September, by a curious manoeuvre, Mr. Balfour, who had succeeded his uncle, Lord Salisbury, as Prime Minister, accepted the resignations simultaneously of Mr. Chamberlain and his two most active Free Trade antagonists in the Cabinet. The result was that there was no declaration in the Conservative Party on the Protection issue, and Clarke was entitled as a Free Trader to consider himself as orthodox a Conservative as the members of the Tariff Reform League. Its immediate importance to him, however, was that as a disunited Party could obviously not go to the country, a General Election was impossible. Clarke, therefore, who would in these circumstances have wished to return to Parliament as soon as possible through a by-election, found himself committed to Brighton, where no contest was expected before the General Election.

Circumstances, however, released him from his unwelcome candidature at Brighton, where, although he took a house and paid frequent visits, he never saw quite eye to eye with his prospective constituents. The loss of this constituency was more than compensated by a new prospect which came in sight in the autumn of 1905. This was the Conservative candidature for the City of London.

The idea of Clarke's candidature originated with Sir David Evans, a former Lord Mayor of London, who was a fellow-passenger with Clarke on a Mediterranean cruise that autumn. Clarke, born and bred in the City, had always held in his secret heart the ambition to be Member for the City. Circumstances seemed to have cast his political path in a different direction, but now in his old age Sir David's proposal gave it an element of likelihood. One of Clarke's oldest and closest friends, Sir William Treloar, was due to be Lord Mayor in the following year, and he threw his influence enthusiastically into the scales on Clarke's behalf. The proposal for his candidature gained instant support, except amongst those ardent members of the Tariff Reform League to whom his Free Trade principles were distasteful. There was a movement to invite Lord Curzon, then just returned from his period as Viceroy of India, to come forward for the City. On hearing of this, Clarke wrote to Curzon, whom he knew well, informing him that, if there was to be a by-election in the City before the General Election, he would stand down so as to enable Curzon to return immediately to Parliament but only on the understanding that the seat should be his for the General Election. There was no by-election, as Mr. Balfour decided on an immediate General Election, and Curzon did not contest the seat. Clarke, therefore, was left with his colleague, Alban Gibbs, as the Conservative standard-bearers in the contest.

The General Election of 1906 was disastrous to the Conservative Party, for it went to the polls without any clear-cut definition of policy. Those who were members of the Tariff Reform League based their claims to the country's confidence on a policy of Protection, while others, like Clarke

himself, were opposed to any taxation of food or raw material. Mr. Balfour's policy as leader of the Party was not clearly known. The first result declared to the country, the defeat of Mr. Balfour by Mr. Horridge at Manchester, was a prelude to the greatest electoral victory ever achieved by Liberalism in England. The City of London was a notable exception to the prevailing tendency of Conservative defeat. There Clarke was triumphantly successful, polling nearly 11,000 more votes than the leading Liberal, with his colleague Mr. Gibbs 400 votes behind him. To Clarke victory meant not only his return to the House of Commons but his election for the constituency which it had been his life's ambition to represent. It was true that he was a Member of what Mr. F. E. Smith was soon to describe as an insignificant minority. It was also true that he reached the age of sixty-five two days after the new Parliament met, and therefore, allowing the Liberals a minimum of five years of office, it was unlikely that he would ever again hold office. But these considerations mattered less to him than the fact that he was once more a Member of the House, and would certainly be in the inner circle of the Conservative Opposition. To him it seemed that thus late in life, relieved from financial care and no longer obliged to devote much time to the practice of his profession, he was at last free to pursue his youthful dream of a political life. *Sed dis aliter visum.*

It naturally was a matter of immediate concern to the Conservative Party to see whether a seat could not be found for their Leader in the new Parliament. Such had been the completeness of Liberal victory that very few seats could be counted safe for Conservatism, if the sitting Member withdrew to provide a re-entry for Mr. Balfour by way of a by-election. One of the few that could be counted on was the City of London, and it was not long before it was suggested that Mr. Alban Gibbs was a suitable person to sacrifice himself on behalf of his Leader, since his father was a Peer and he himself would in the nature of things soon be destined for the House of Lords. Lord Salisbury wrote to Clarke to ask his assistance in the

delicate matter of approaching Mr. Gibbs with such a proposition :—

“ My dear Sir Edward Clarke,

The situation is appalling but not desperate. We have lost not only the greater number of our Seats but we are deprived of most of our fighting men. Still we have a few good ones left. There are yourself, Percy and Carson—without counting the great Joe and his son, who may be a blessing or a curse according as the situation develops. But there is one other man who is essential—Arthur Balfour himself . . . now there is one seat which seems to me to be pointed out, namely, that of your colleague in the City. But there are evidently two conditions which must be satisfied, and only two—for I am confident of Balfour's assent—viz. : (1) Would the City approve ? and (2) Would Alban consent ? As to (1) you could no doubt give a ready answer—I do not anticipate there would be any difficulty. As to (2) I am not so sure. But you will I hope be able to guide us.”

(Lord Salisbury's letter then goes on to discuss Mr. Gibbs's position.)

Mr. Akers-Douglas, the Conservative Whip, also wrote to Clarke, saying, “ I am sure you will do what you can with Gibbs and see how important for the Tory Party it is that we should get A. B. back without delay.” Clarke thereupon wrote to his colleague and earned the thanks of Lord Salisbury for his share in persuading Mr. Gibbs, who had a certain natural reluctance, to leave the seat free for Mr. Balfour. Mr. Balfour was duly accepted as Conservative candidate for the City, and Clarke threw himself into the business of supporting his candidature so as to ensure his triumphant return. It so happened that Mr. Balfour was ill on February 27th, the day fixed for the poll, and so Clarke discharged the normal functions of a candidate on polling day, and after the declaration made the speech of thanks on Mr. Balfour's behalf. He was naturally on friendly terms with Mr. Balfour, who invited him to take

his Seat on the Opposition Front Bench, a privilege to which Clarke, not having been a Member of the preceding Conservative administration, would not otherwise have been entitled.

But the struggle to re-enter Parliament was not the only, nor the greatest, struggle in which Mr. Balfour was then involved. The Election rout was ascribed by many of the Protectionist elements of the Conservative Party to the weakness and indecision of Mr. Balfour's leadership. There were many who believed that the Conservative Party could be rallied only by the adoption of a positive policy of Protection. If Mr. Balfour was not able or willing to play his part in such a programme, they were willing to look elsewhere for a leader and confident that they would not have far to look. The story of the internal struggles of the Conservative Party at this time has been told elsewhere more than once; here it is intended to refer to it only in so far as it affected Clarke's position. Clarke was one of that powerful minority in the Conservative Party—numbering about one-third of the Conservative Membership of the House of Commons—who did not accept the policy of Protection. He therefore accepted without reservation the leadership of Mr. Balfour, and had declared his allegiance to him in the City at a time when pressure was brought to bear on him to maintain silence about the leadership of the Party. But although Clarke's position was thus clear, Mr. Balfour's course was less simple. Mr. Chamberlain was ready to support Mr. Balfour, but only on condition that the work for Tariff Reform was not allowed to drop. Nobody could at that time have led the Conservative Party who did not have the support, if not the confidence, of Mr. Chamberlain, and consequently Mr. Balfour had a series of conferences with Mr. Chamberlain and the most prominent of the Protectionist supporters. At last Mr. Balfour sent a letter for publication in which he stated in terms that Tariff Reform was the first constructive work of the Party and that a general tariff, including a small duty on imported corn, was not objectionable in principle. Balfour by this declaration came down, reluctantly but decisively enough,

on the side of the big battalions. The Conservative Party henceforth was Protectionist.

The Free Trade element in the Conservative Party, and Clarke among them, were left to solve the problem of their own position in a Conservative Party which was also a Protectionist Party. The Conservative Party, conscious, no doubt, of their lack of unity on the Fiscal question, had not raised the merits of Protection in any amendment to the address. But the Liberal Party, flushed with victory, were not inclined to let their opponents off lightly, and consequently Sir James Kitson decided to introduce his famous motion: "That this House, recognising that in the recent General Election the people of the United Kingdom have demonstrated their uncompromising fidelity to the principle and practice of Free Trade, deems it right to record its determination to resist any proposals, whether by way of taxation upon foreign corn, or by the creation of a general tariff upon foreign goods, to create in this country a system of Protection." It is in keeping with the irony of history that this motion is now best remembered for the opportunity it afforded "an insignificant Member of an insignificant minority" to make a brilliant and damaging onslaught upon the exultant apostles of Free Trade. At the time, however, its importance lay rather in the dilemma in which it placed, and was designed to place, those Members of the Conservative Party who did not accept Mr. Chamberlain's programme. Forty of these, with Clarke among them, met to consider their attitude; and after a long session it was recommended that, if the Conservative amendment to Sir James Kitson's Motion was defeated—as it inevitably would be—Members taking this view should abstain from voting on the Motion.

Sir James Kitson's Motion was proposed on March 12th, the day on which Mr. Balfour took his seat as Member for the City of London. Consequently, he made his first speech as Leader of the Opposition in reply to the Motion. Clarke has characterised this speech as "a pitiful performance," and the universal opinion was that it was entirely lacking in vigour and incisiveness. These qualities

were contributed later in full measure by the maiden speech of the future Lord Birkenhead. He, however, put the case of those younger Conservatives, who regarded Protection as the natural and inevitable policy of the Conservative Party. Clarke, for his part, was concerned that the view of those who distrusted the abandonment by the Conservative Party of its policy of acquiescence in Free Trade, should not lack expression. To this end he told Mr. Balfour that he was anxious to intervene in the Debate in order to express the sentiments to which he had already given voice outside the House. At the same time he pointed out to Mr. Balfour that his views were not in accord with what was now the official policy of the Party and offered on that account to waive for the occasion his right of speaking from the dispatch box, and to speak instead from a position further along the bench so as to emphasise the personal character of his intervention. Mr. Balfour, however, said that he would prefer him to speak from his accustomed place, and secured for him the desirable position of following Mr. Lloyd George in debate, at the same time excusing himself from hearing his speech on the grounds of fatigue. Mr. Chamberlain, to whom Clarke communicated his intentions, was also absent when Clarke rose to make his speech at 11 o'clock in the evening. His speech was a rehearsal of the Conservative Party adherence to Free Trade in 1852 and of benefits that had followed from it, concluding with a warning of the danger of abandoning it after half a century. He quoted the renunciation of Protection by Mr. Disraeli and Lord Derby in 1852, and declared that it was still valid for the Conservative Party. With regard to Protection he was emphatic in his repudiation: "There are some of us who will stand firm in the creed which has so long been the creed of the Tory Party, and will resist now, and at any time, any proposal to put a tax on the corn or meat of the people, unless indeed in circumstances of so terrible a national necessity that we are compelled to sacrifices of the bitterest and deepest kind. But as a matter of administration and taxation, there are a good many of us who will never be parties to its

introduction into our financial system." When the division was taken the motion was carried by the enormous majority of 471 to 123. The larger figure included six Conservative Free Traders, while the majority of them abstained. Clarke himself took this latter course, which had been recommended at their meeting. It is improbable that Clarke's speech had any appreciable effect upon the division, for the intention to abstain had already been arrived at. From the point of view of Party orthodoxy he was less at fault than the six Conservatives who had actually voted for the Free Trade Motion. But he had given considerable offence to Protectionists, who were angry at the figures, not only because he had abstained from voting, but because he had made from the Opposition Front Bench an eloquent defence of Free Trade. This was the crime which it was hard to forgive and the course which it was impossible to condone, if the Conservative Party was to be united in the cause of Protection.

There were other considerations, too, which prompted the selection of Clarke as a victim to provide an object lesson for others who might be disposed to contest the Protectionist domination of the Conservative Party. He had opposed his Party on the issue of the Boer War and had been forced to resign his seat in consequence; he had strongly criticised Mr. Chamberlain in his concluding speeches in Parliament as Member for Plymouth; he had only represented his present seat for a few months, and there had been certain opposition to his selection as Conservative candidate only six months earlier. This last factor was of considerable importance, since it provided a nucleus of discontent round which those who were dissatisfied could quickly build up a formidable *bloc*. It is not to be thought that the majority, or even any considerable proportion, of those who criticised his conduct at this juncture were animated by personal motives. Many of those who had supported his adoption six months before were no doubt surprised and concerned that so early in the new Parliament he should make an attack upon what was fast becoming, and was clearly destined to be, the official

policy of the Conservative Party. Indeed, there were but few who rallied vigorously to Clarke's defence. Prominent among these was Sir William Treloar. But even his influence could not prevent the passage of a resolution in the City of London Conservative Association calling upon Clarke to explain his conduct. Thus for the second time Clarke found himself called to account by the governing body of his supporters in his constituency.

At this critical point Clarke fell seriously ill and was ordered by Sir Douglas Powell a period of abstention from work and politics. This period he decided to spend in a sea voyage and accordingly set forth with his wife and his son, William, to Cairo. His absence was rather longer than he had intended, as his wife suffered on the way back from an attack of tonsillitis, which detained them for a fortnight at Algeciras. Nevertheless, he arrived back in London in May, ready for the struggle which lay ahead. Though he did not underestimate the strength of the forces opposed to him, he felt some confidence in his ability to gain a verdict from the Association. But should he fail there, he had no intention of regarding such a judgment as final. He was resolved to appeal from it to the great body of Conservative electors in the City of London, whom he hoped that his eloquence would enable him to carry against the Civic magnates who preponderated in the Association. He was conscious, too, of a powerful sympathy and support from outside, which was exemplified in a letter from Lord Curzon, who said: "I hope you are not disheartened and will not be dismayed at the attacks upon you. I should not pay serious attention to them." Criticism in Conservative circles in the City, however, had naturally not diminished during his absence, and on his return Clarke found his position even more difficult than it had been before his departure for Cairo. One of the forms taken by the campaign was an effort to freeze him out by not extending to him all the usual considerations generally enjoyed by a Member of Parliament.

It is not certain what the result of the fight would have been if it had gone to a finish, though it is probable that

Clarke, who was fighting against the future, must have lost. But the issue was never fought out. For this two factors were primarily responsible : Clarke's health and the attitude of Mr. Balfour. Clarke found that the friendliness of Mr. Balfour, which followed upon Mr. Balfour's election for the City as his colleague, did not survive his attack on Protection. Mr. Balfour adopted a cold and unfriendly attitude both in the House and in the City, which Clarke felt that he could only interpret as an indication that the Leader was anxious to be rid of his embarrassing companionship in the representation of the City. This feeling was greatly strengthened by Mr. Balfour's refusal to interfere on behalf of his colleague and by his silence when asked to express an opinion. This new development put a different complexion on matters so far as Clarke was concerned. It meant not only that there was an effort on the part of some of his constituents to be rid of him, but that the Leader of his Party, who was also his colleague, was only willing at best to tolerate his position on the front bench to which he had specifically invited him. In these circumstances it was apparent that Clarke would not be in the inner counsels of the Conservative Party, and would be unable on that account to take that active part in political life, and to render that measure of service to which he had aspired. At this stage Sir Douglas Powell made a further examination of him. He wrote : " I am glad to say that we did not find any organic defect in your constitution beyond such changes as would naturally be accounted for by your time of life, signs of wear perhaps a little in excess of your years but otherwise normal. . . . In our opinion if you adhere to your Parliamentary career and the public work it entails you should relinquish to a great extent your professional work. We do not consider your physical and nervous powers equal to the demands of both. One further point. We regard it as of great importance that you should make your decision soon."

Clarke did make this decision soon. For him Mr. Balfour's decision was final, because it absolutely destroyed his conception of the service which he had hoped to render to the

Conservative Party. It is unlikely that the question of health would of itself have been sufficient to lead him to take a step which meant the irrevocable severance of all political ties. Sir Douglas Powell's report, however, clearly afforded a reasonable pretext for retirement. On May 30th, therefore, Clarke wrote to Mr. Balfour to intimate his intention of applying for the Chiltern Hundreds. In the course of the letter he wrote: "I am acting under the strongest medical advice and so need not say anything as to other reasons which you might or might not think sufficient. If I could ignore the question of health I should certainly not consider them adequate to justify so serious a step." To this communication Mr. Balfour replied by telegram: "This is only to say I have received your letter. Am just leaving for Versailles, from where I will write to you." No letter was, in fact, written, and with this bare acknowledgment, Clarke applied for the Chiltern Hundreds, and ceased to be Member for the City only four months after his election.

This time there was no question but that Clarke's political career was terminated for ever. Apart from this, however, there was in the resignation of 1906 a bitterness which had found no place in the resignation of 1900. In 1900 he had been in opposition to the policy of his Party and of the Government on the gravest issue of the hour. He considered that policy to be mistaken and dangerous; but since he was in a very small minority which disagreed, it was clearly his duty to resign, a course that was the less disagreeable in that it emphasised his protest and commended it to the attention of the country. In 1906 he differed on a question which was not of immediate application; and though the policy of Protection commended itself to the majority of the Conservative Party, the Free Trade minority could claim with some justice that there had been no official adoption of what was a new policy for the Conservative Party. Owing to Mr. Balfour's indecision, Conservative Free Traders like Clarke stood at the 1906 Election without any consciousness of political heterodoxy. Nor had Clarke been aware that his efforts on behalf of Mr. Balfour in the

City by-election had been directed towards the return of a Protectionist to Parliament. There was, too, on this occasion the personal feeling that he had been treated somewhat shabbily by the Leader of the Party, to whose return to Parliament he had so notably contributed only three months before. Lord Salisbury, who naturally continued to carry enormous weight in the counsels of the Conservative Party, being unfortunately ill at the time of the controversy in the City of London, was unable to intervene. With regard to Mr. Balfour, Lord Salisbury said: "I am confident that he would have felt, as I felt, very much obliged to you for your action in the by-election, and it is incomprehensible to me that he should have wished to behave to so old a friend to whom he was under fresh obligations in any manner which was abrupt even, and much less in one that was rude. Why, he is the most courteous of men, let alone other reasons for a different behaviour to that which you experienced." Mr. Balfour's conduct in this matter is indeed incomprehensible, and can only reasonably be explained by the characteristic vagueness of his disposition.

From others Clarke received many expressions of sympathy and even indignation at this treatment. Thus, for example, Sir Ian Malcolm expressed "indignation at the behaviour of men who call themselves Tories but who have dared to criticise a man like yourself, who has done more for our principles than the whole lot of them put together." Mr. Justin McCarthy, in a letter of regret, wrote: "I sat in the House of Commons during many years of your brilliant career, and I soon came to appreciate and admire and continued more and more to admire, your success as orator and debater, your statesmanlike qualities, your disinterestedness and your high personal character. I feel that the House must suffer an irreparable loss when you leave it." These were letters written within a few days of his retirement. But a year later we find Lord Curzon writing to him to express "the hope that you are recovering from your disgraceful treatment." His old rival for Law Office twenty years before, Sir John Gorst, after expressing "grief and

indignation at the treatment you have received," went on to say : " There is no place in the modern Tory Party for people who stick to the opinions and principles that have animated you and me throughout our political life."

Was there any place for Clarke in the Conservative Party in 1906 ? Clarke expressed himself vigorously, and at some length, on his view of the position, and of the circumstances attending his political retirement, in a letter written in October, 1906, on board the *Kenilworth Castle* to his friend Professor Goldwin Smith :—

" During the twenty years of my Membership for Plymouth I believed I was gradually securing a position which would give me power to serve my fellow-countrymen through their confidence in my honesty of purpose and freedom from a merely personal ambition. But in 1899–1900, because I said what I thought on a great public question, my Constituents flung me out of Parliamentary life and public influence with the apparent approval of the mass of popular opinion. It was a great blow to me, but I was still not too old to hope that at some later day when the immediate cause of my expulsion had passed away I might come back to share the fortunes, in no obscure place, of the party for which I had fought and worked. I had reason to believe that the opinions I held on fiscal questions were exactly those which were held by Mr. Balfour.

" It is true that his speeches had been elaborately obscure, but the policy which was defined and declared in Parliament as that of his government was one which I cordially accepted. Within a few days of my election for the City of London, where my opinions were quite clearly declared, he surrendered to Mr. Chamberlain, meekly submitting to the disastrous policy which had caused his own and his party's defeat at the polls, and which I am absolutely certain will condemn that party to exclusion from office as long as it is persisted in. What could I do ? If I had held my tongue I should have been an accomplice in this shameful betrayal, and must have accepted the duty of upholding the stupid proposals which Mr. Chamberlain, displaying his ignorance

of economic science in every speech he made, had forced upon his feeble rival. I could not do this, so, knowing beforehand what the cost might be, I made the speech a copy of which I now enclose. Then came the organised attack upon me by the Chamberlainites in the City. They are not a majority of the City electors, and if it had only been a City question I should have fought them and beaten them. But the real trouble was in the House of Commons.

"I could not have continued to sit in the front opposition bench; although it was at Mr. Balfour's wish that my speech—the character of which he knew beforehand—was made from the box at which the spokesman of the opposition usually stands; and if I had moved to a seat elsewhere I must have become the centre of a separate Parliamentary group. This was too grave a responsibility to accept, and the strain of the situation completely broke me down. So I had no option but to say a final farewell to all hopes of Parliamentary influence."

Of the shabbiness of Clarke's treatment there can be little real doubt, though it must be remembered in extenuation of Mr. Balfour's conduct that it would inevitably have embarrassed further his delicate position in regard to Mr. Chamberlain, if he had undertaken the defence of a Conservative Member who had attacked Protection on the floor of the House. The truth is that by 1906 Clarke was somewhat out of touch with the Conservative Party, and especially with the younger element of it. How far this was so can be seen from a letter written by Clarke to a friend three weeks after his retirement from Parliament, in which he said: "This is a curious business. Here is A. B., whose cowardice has destroyed the Conservative Party, being entertained as if he were one of the heroes of the hour. Our people seem delighted at the destruction of the Party and do not know whom to admire most—the Radical Unitarian who has secured for them the heaviest defeat since 1832, or the feeble philosopher who has allowed himself to be dragged at the chariot wheels of the Birmingham Dictator. Soon or late, very soon I think, the wheel

will go round and then it is possible that the old Tory Party will find a leader who will reconstruct it and make it again, by the force and value of its principles and the honesty of its leaders, a dominant influence in the public life of the nation. But when that time comes all my work, private as well as public, will probably be at an end."

From this it can be seen that Clarke himself realised that there was little scope for him in the existing Conservative Party. He was out of sympathy with the aims of Mr. Chamberlain and the personality of Mr. Balfour. Nor had he any apparent alternative to the leadership of these two men, with the exception of a tentative suggestion of Lord Curzon at some future date. But Lord Curzon, apart from the disadvantageous circumstance of his membership of the House of Lords, was not the figure around which to rally popular support for the Conservative Party. Failure to find a Leader mattered less than neglect to formulate principles. A mere negative acquiescence in the Liberal policy of Free Trade could not suffice the Conservative Party in Opposition, still less in Office. In the matter of isolated and unco-ordinated extensions of the Social Services it was likely that the Conservatives, hampered by their reactionary elements, would always be outbid by the Liberal Party, spurred on by the demands of their Labour allies. Where the Conservative Party has always had an advantage is in maintaining and putting forward a coherent and comprehensive view of the sort of life and society at which they are aiming. This had been the especial gift of Disraeli; this was what had marked off Mr. Chamberlain from his old Radical colleagues. In the beginning of the century it was his vision that spelt the way of the future, a vision of Britain as a centre of an Imperial system, with the highest material standard of life and the greatest unity, liberty and will-to-service of the entire world. For Clarke the vision came too late.

Clarke was a Victorian in politics, as in generation. Though a devoted admirer of Disraeli, he never, like the younger members of his Party, fell under the spell of Mr. Chamberlain. It is significant that in his last speech he

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quoted Disraeli's renunciation of Protection in 1852, without referring to his notable defence of Protection in 1846. What he does not seem to have realised is that Disraeli only abandoned Protection for expediency because, without that renunciation, it would have been impossible in the prevailing mood of blind acceptance of Cobdenite principles to have recreated the Conservative Party. Clarke spoke of going back to the old Tory principles. But these principles were the principles of Protection to which Mr. Chamberlain was returning after their compulsory abandonment for half a century of triumphant commercialism. The principles to which he appealed were sanctified by an antiquity of no more than sixty years; those to which Mr. Chamberlain proposed to return had their roots in the economy of the Middle Ages. Clarke could recognise the real danger in the increase in the cost of the food of the people; but he was neither countryman nor statesman enough to realise that the country which sacrificed its agriculture to the acquisitiveness of its merchants has numbered the days of its greatness. Clarke, like most of his generation, was blinded by the apparent prosperity which Free Trade brought, and could not read the other side of the balance-sheet whereon appeared the items of insecurity, urbanisation, and the break-up of the old ways of life. To some extent Mr. Chamberlain's remedies were incomplete, for he was from Birmingham and his Protection was industrial. But Clarke did not attack the system for its limitations, but for its virtues. He clung to the system and the way of life, which had obtained and borne fruit during the whole period of his adult life; further he did not see. By nature he was a Victorian before he was a Tory; and so though one regrets the manner of his departure from political life it must be said that the period of his political usefulness had in all probability come to an end.

CHAPTER XVIII

LEGAL COME-BACK

ILL-HEALTH, disappointment, and disillusion combined to leave their mark on Edward Clarke in the early summer of 1906. He felt, as many others have felt, that the wisest and most effective remedy was a temporary translation from the scene of his ordinary activities. Fortunately, both the occasion and the companion were to hand, and on June 21st he set off with his son-in-law, Captain Rees-Webbe, for South Africa. For Captain Rees-Webbe it was a return to the territory in which he had been very differently engaged a few years before in the Boer War, and this circumstance made him, as far as Clarke was concerned, a most interesting guide and informant. Clarke's own thirst for knowledge was as usual inexhaustible, and his zeal in communicating it when once acquired was scarcely less. His letters to Lady Clarke were filled with all that he did and saw, and so determined was he that she should miss as little as possible at second hand that he drew for her instruction rough sketches to illustrate the working of the Kimberley Diamond Mines. Not all the trip, however, was devoted to expeditions to mines, to battlefields, and to waterfalls: Clarke also made a number of interesting personal contacts. At Cape Town, he renewed acquaintance with the past as the guest of his former client, Doctor Jameson, who had become Prime Minister of Cape Colony. At Pretoria he not only renewed acquaintance with the past, but looked into the future, for there his health was proposed at a dinner in his honour by the local Bar, by a former pupil of one of his Juniors in the Jameson Case. The former pupil's stature had already grown rapidly in the decade which separated Clarke's visit from the Jameson Case, but the greatest glories of General Smuts still lay in the future.

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early in October Clarke was back in London, before the start of the new Law Term and the re-assembly of Parliament. In the latter he had no longer any active personal interest, while the Law Term was far from meaning to him that whirlwind of professional activity in which he had been caught up for so many years. His practice, which had started to decline in 1904, had dwindled with astonishing celerity in 1905 and 1906. That it should fall somewhat in face of the competition of younger Silks of established eminence, such as Mr. Isaacs, Mr. Carson, Mr. Smith, and Mr. Simon, was only to be expected ; but that it fell so rapidly was due to the widespread belief that he himself was disinclined to continue his full participation in the legal fray. This popular belief was well founded in that it had been his intention in 1905 virtually to desert the Bar in favour of complete absorption in political activity. Politics could now no longer absorb his energies as he had wished ; but nevertheless his intention substantially to withdraw from legal practice remained unaffected by the disappearance of one of the considerations which had mainly prompted it. Indeed, his return from South Africa in time for the Law Term was dictated less by the exigencies of his practice than by the desire to discharge his duties as Treasurer of Lincoln's Inn, to which Office he had been elected in 1906, his term following immediately that of the then Prince of Wales. But for this he would have probably prolonged his absence from England after the collapse of his health and his hopes in the early summer.

In spite of the sudden cessation of active participation in Law and Politics, Clarke did not find himself idle ; to have done so would have been insupportable to a man of his temperament. There was still much for him to do, more especially with regard to his Church activities, and literature. In 1907 he made his first incursion into literature with a severely practical contribution entitled " Easy Short-hand." This slim volume embodied the system which he had worked out for the benefit of that not inconsiderable number of people, who, though without the desire or opportunity to take a formal course in shorthand, nevertheless feel the need

of something more expeditious than the ordinary longhand. He had the gratification, unusual to a new author, of becoming a best seller with his first work. He did not entirely desert the Bar, however, for he still cherished a hope that his political failure would be compensated by a Judgeship. Such an appointment, in the case of a man in the late sixties, would have been unusual, but by no means unprecedented. There would undoubtedly have been a certain appropriateness in elevating to the judicial Bench even in his old age a man who had enjoyed so unquestioned a leadership in his profession, and who could have been Master of the Rolls ten years before. It is true that there was at this time a Liberal Government in power from whom Clarke as a Conservative would in the ordinary way have less hope of preferment. In fact, however, Mr. Asquith showed himself anxious to give recognition in another direction to Clarke, and in 1908 he recommended that he be sworn of the Privy Council. The ceremony was at Windsor Castle and so Clarke had only to drive over from Staines. Perhaps it was the circumstance that he set out from the country, and not from London, that led him to an erroneous interpretation of the instruction "morning dress" inscribed upon the Command. Be that as it may, he arrived at Windsor Castle in his usual grey suit, instead of the formal black frock-coat, and thus unconventionally attired, was sworn of the Privy Council. But although this honour came to Clarke at the suggestion of the Liberal Premier, with whom he had enjoyed many contests in the Courts, the Judgeship remained elusive. But unexpected circumstances soon made him glad that he had never entirely relinquished practice in the Courts.

Some twenty years earlier, the Law Guarantee Society had been established, and Clarke had become a large shareholder. The Society lent money on mortgage on various properties, chiefly public houses and places of amusement. The value of these places, as assessed in the halcyon days of the late 1880's, could not be maintained, and when the Society foreclosed, they found all too frequently that their real assets were considerably less than the values appearing in their books.

By 1909 it was clear that the whole project was a failure, which could no longer be supported, and the Society failed with very substantial liabilities. To Clarke this was a severe financial blow, since approximately one-third of the capital on which he relied for his retirement, was invested in the Society and therefore lost. He wasted no time in vain regret, but instantly set about the necessary and disagreeable task of cutting his coat according to his new measure of cloth. He was no longer able to continue living at "Thorn-cote," but he was not obliged to leave Staines, as he was able to build on a smaller scale on the land adjoining Saint Peter's Church which had been acquired by him and his fellow churchwarden. In "Peterhouse," as he called it, he spent the rest of his days until his death. But in 1909 he decided that retrenchment in domestic economy was not enough. With unhesitating resolution, he abandoned his project of retirement and set about recapturing a practice at the Bar.

Come-backs are proverbially difficult in any sphere of life, and advancing years certainly make them no easier. But it is perhaps less difficult for a lawyer than for most people to attempt to re-enter the lists of his calling, for the ways of the law do not change appreciably. Clarke had the personal advantage, too, of great standing in his profession, which had reached its peak only six years before. Consequently, as it became known that he was once more devoting himself wholeheartedly to practice, his clients soon began again to find their way to the familiar Chambers in Essex Court. So it is that, although the entries for 1907 fill barely a page in his fee book, the reassuring sight of cases and fees soon becomes increasingly evident. One of the first big cases that came his way to cheer his return to active practice was the defence of Canon Lambert and his wife. Canon Lambert and his wife were prosecuted by the N.S.P.C.C. on a charge of ill-treating and neglecting a child, Mary Inman, who lived in their house as companion for their own daughter Rosamond. This brief was no doubt given to Clarke because of the similarity of the charge with that against Mrs. Penruddocke, whose defence he had so ably conducted in the great days of 1902. Like the Penruddockes, the Lamberts were, of course,



"THE BAYARD OF THE BAR"

people of social position, to whom conviction on such a charge might well mean social ostracism; but in their case the matter was if possible even more serious than it had been to Mrs. Penruddocke on account of the Canon's Cloth. It was an expensive matter briefing the Defender of Mrs. Penruddocke, for the trial was not at the Old Bailey, but at Dolgelly Assize Town in North Wales. Of course, as Clarke was not a member of the North Wales Circuit, he had to be paid, in addition to his brief fee, a special fee of fifty guineas. In point of fact, Clarke received fifty guineas on his brief, and a sum of no less than three hundred guineas by way of special fee. To the uninitiated this disparity between the special fee and the brief fee will appear surprising, but practising barristers will recognise it as a device sometimes employed when fashionable Silks are brought down to appear in Circuit cases, whereby the Junior only obtains his conventional proportion of the Leader's brief fee without being entitled to any proportion of the considerable special fee. As the case lasted for four days Clarke became entitled to a further fee by way of refresher, and consequently his total remuneration for the proceedings made a very satisfactory start to the year 1909. Even more important than this evidence that he was still sufficiently esteemed to be able to command the old proportions, was the proof afforded by his handling of the case that he had not lost his old masterly touch. He was able by the deftness of his cross-examination to show that the evidence for the Prosecution was sadly tainted by ill-will and resentment against the Lamberts. So compelling, too, was the contrast pointed in his speech between the nature of this evidence and the high character and reputation borne by the accused, that he was able to - secure a triumphant acquittal without having to call all his witnesses.

Stranger, though less successful, was Clarke's participation in the famous Sackville Peerage Case which was tried in February of 1910. This case took the form of a petition by one Ernest Henri Jean Baptiste Sackville-West, that his parents had been lawfully married, and that he was their lawful son and a natural born British subject. His claim

recalled and arose out of one of the strangest of Victorian romances, that between Lionel Sackville-West, youngest son of the fifth Earl De La Warr and member of the British Diplomatic Service, and the exotic young Spanish dancer whose stage name was Pepita de la Oliva. As Pepita danced through most of the considerable cities of Europe, and Mr. Sackville-West deposited his despatch case in almost as many, it was perhaps not altogether surprising that their paths should cross. What was surprising was that their lives and destinies should so long be linked. They met in Paris when Sackville-West was attaché at Stuttgart. When he was promoted to be Secretary of the Legation at Turin, he took villas for Pepita at Como and at Genoa. This agreeable arrangement, and the birth of a daughter, did not retard his diplomatic progress, for in 1864 he was made Secretary of the Legation at Madrid, accommodating Pepita in another accessible villa. Here more children were born before Sackville-West moved on to Berlin and thence to Paris, where Ernest Henri was born, the youngest of his parents' seven children, but the only son. In 1871 Pepita died and Sackville-West trod, alone but with unabated firmness, the path of diplomatic preference. It was not surprising that some people thought that a couple who had been so long together and had been the parents of so many children must have been married. Amongst these, comprehensibly enough, was their son, whose certainty as to this was presumably not diminished by the fact that his father had become Lord Sackville, and that, if legitimate, he would succeed to the title on his father's death. On the assumption of his illegitimacy that peerage passed to Lionel Sackville-West's nephew, but the stock of Pepita was not altogether excluded thereby from the pages of Debrett, since the new Lord Sackville married Pepita's eldest daughter, Victoria Josephine Sackville-West.

The new Lord and Lady Sackville, together with other relations, opposed the petition, and denied the petitioner's legitimacy, as did the Attorney-General, who has to be made a party to proceedings where legitimacy is disputed. Clarke led Mr. Harold Morris, for the Petitioner, while the Opposi-

tion was divided between the Attorney-General and Sir Robert Finlay, K.C., who led Mr. Eldon Bankes, K.C., and Mr. Ralph Bankes, K.C., for the relatives.

Clarke was able to rely on certain entries made by the late Lord Sackville in which he referred to Pepita as his wife, and upon some evidence of reputation. This latter evidence consisted primarily of that given by witnesses that people had always considered the pair to be married, and had known them as "Count and Countess West." There was a Colonel Holst of the Danish army, who said that the Sackville-Wests had left cards upon him and his wife in 1868, and he was sure that a man of his noble character would not have left upon him and his wife the card of his mistress. The truth no doubt was as expressed by one of the witnesses, "that the good-natured people considered that they were married, and the ill-natured people considered that they were not." The occasions on which the late Lord Sackville had referred to Pepita as his wife were easily susceptible of the explanation that he was desirous of considering the feelings of the lady who was the mother of his children. As to the possibility of marriage, the opposition had the most convincing of answers, that Pepita was married to somebody else. Pepita had come to Madrid with her mother as a beautiful young dancer of nineteen in 1849. There she had dancing lessons from Juan Antonio de la Oliva, to whom she was married within two years of coming to the capital. After about a year of marriage Juan quarrelled with his mother-in-law, and the young bride sided with her mother. There was a separation, but Juan and Pepita remained nominally married until his death in 1888. The judge accepted the evidence which was called to prove these facts, which virtually disposed of the case, since it clearly precluded the legitimacy of the children whom Pepita had borne to Lord Sackville. Nevertheless, the Opposition intended to call witnesses to disprove the evidence of reputation given in support of the petition. Before Mr. Bankes had called these witnesses, Clarke rose to say that he had received a letter from his client instructing him to ask for an adjournment to enable documents to be brought from Spain to assist

in the cross-examination of these witnesses. The letter concluded with an instruction to Clarke that, if the application was refused, he was to retire from the case, "as I do not care to go on any further with such an unfair trial." Clarke said that he would make the application if he was able to tell the Court, from his knowledge of the Case, that the documents coming from Spain would be material. In the circumstances however, he thought it proper for him to retire from the Case, and leave the Petitioner to apply himself: "I am very anxious to give my client whatever assistance I can properly give; at the same time I am not entitled to deal with the Court other than with perfect candour. . . . I cannot do more in these circumstances than say that if any assistance I can give the Petitioner, now or hereafter, is asked for I would assist him; but as Counsel representing him I take this to be a withdrawal of my authority." Mr. Morris also withdrew on the ground that the application was not a proper one, and the Petitioner's solicitor, whose advice not to proceed with the application had been rejected by him, also withdrew. The Petitioner was left to carry on himself; but after a further abortive request for an adjournment he gave in. Since the Case had been pending since 1907, and was not tried until 1910, an application for an adjournment to get further documents was unlikely to be bona fide; and the difficult decision imposed upon Clarke to withdraw was no doubt a correct one. As for the main issue, it could not reasonably be in doubt after the evidence of Pepita's marriage to Juan. The petition was dismissed and so failed an assault upon Knole, which at the time of its launching had excited the liveliest public interest.

How completely Clarke retained his pre-eminence at the Bar can be seen from the case in which he appeared, shortly after his seventieth birthday, for the Baron De Forest in his unsuccessful slander action against Mr. Milner, Comptroller to Lord Derby. The case was of interest to Society folk of the day, but is chiefly remarkable because Clarke led three other Silks and two Juniors for the Plaintiff. The three Silks were all Counsel of reputation, being Mr. Astbury,

later a Judge, Mr. Hemmerde, later Recorder of Liverpool, and Mr. F. E. Smith, later Lord Chancellor. Clarke had 500 guineas on his brief and a further 500 guineas in a second case against another Defendant on substantially the same set of facts. The three other Leaders presumably had fees in proportion, but not one of these distinguished gentlemen opened his mouth in the course of the proceedings. Clarke conducted the Court part of the case on his own, against Sir Edward Carson, K.C., Mr. Henry Duke, K.C., later Lord Merrivale, and Mr. Fraser, later Mr. Justice Fraser. Clarke was somewhat unfortunate in this case, which was a claim for slander in respect of words alleged to have been used about the Baron's treatment of his wife. Clarke's opening showed that he had lost none of his old perfection of judgment in assessing the right key in which to pitch his case. The impression conveyed by his opening was exactly that which was most calculated to command the sympathy of the jury, for the Baron was cast in the rôle of an injured husband reluctantly compelled to give evidence in support of this claim in order to clear himself of the charges of ill-treating his wife. Unfortunately, in order to prove the speaking of the slander, Clarke had to rely on two witnesses who attended on subpoena, of whom one was Major White, who had been the Baron's opponent at the Southport election, and the other was Lord Derby. In spite of skilful leading by Clarke, however, Lord Derby had no recollection of the slanderous phrases alleged to have been used by Mr. Milner. Thereupon Clarke asked Mr. Justice Darling, who was trying the case, to allow him to treat Lord Derby as a hostile witness and subject him to cross-examination. This, however, the Judge refused with the words: "If I thought Lord Derby was not doing his best to remember and answer you frankly, I would allow you to cross-examine him in a moment. But he must be treated like any other witness though he is a Peer." As Major White's recollection was no more helpful, Clarke had to admit that he had failed to prove the speaking of the slander, and consequently had to submit to judgment for the Defendant.

Although the Sackville and De Forest Cases petered out

in a manner rather unsatisfactory to his clients, Clarke's practice was vigorous and substantial up to the end. In 1911 at the age of seventy he earned legal fees to the amount of considerably more than £7,000. Thereafter, his financial position being now assured, he was content to let his practice dwindle. Even in 1914, however, working for little over half the year, he made £2,300. This total was largely contributed to by his brief for one of the Defendants in what was known as the Canteens Case, in which various employees and Directors of Liptons were charged under the Prevention of Corruption Act with conspiring to give money to Army Officers to induce them to show favour to Liptons in the matter of Army catering contracts. The proceedings lasted nine days in May, 1914, and seventeen Counsel were involved. Clarke had a four-figure brief, and decided that it should be his last. In the course of the proceedings at the Old Bailey he mentioned that this would probably be the last occasion on which he addressed a Court. The result of these chance words was as gratifying as it was unexpected. Some of Clarke's friends and admirers, realising that the year also marked the jubilee of his practice at the Bar, resolved to organise a farewell dinner of the Bar in his honour. Though such dinners were common enough in the case of judges, it was almost, though not quite, unprecedented to accord such an honour to a private member of the Bar. The response, however, was immediate and overwhelming. On July 14th the Lord Chancellor presided over a dinner at which nearly all the judicial Bench, and not a few of the country's statesmen, were present. Those Judges who were prevented from attending by their Circuit duties, wrote letters of congratulation. In addition to the long high table, there were eight other tables at which sat over a hundred King's Counsel and a large body of Juniors, many of whom have since that date risen to great eminence in the service of the Law. Such an array was impressive to see. But to the man in whose honour they were all gathered there it was more than impressive. Looking down the familiar setting of Lincoln's Inn, Clarke saw on every side faces that evoked memories of nearly forgotten contests that marked the stages

in his fifty years of legal life. Even his earliest days, before the Judicature Act, before the Law Reports, before the Law Courts in the Strand, were recalled by the welcome presence on his right of his mentor in those early days, Lord Halsbury.

After the Lord Chancellor had proposed his health it fell to Sir John Simon, as Attorney-General, "to express the sentiments of the Bar." Sir John asked the reason for the great admiration accorded to Clarke's professional life, and himself supplied it in these words: "He cultivated, developed and perfected a mode of advocacy which, while it served his clients to the uttermost, was always scrupulously fair to his opponents. He employed a style of cross-examination which was always effective and was never brutal. He exhibited a kind of forensic eloquence which always showed that the orator was burning with the impression within his own heart. And, lastly, he so conducted himself in the discharge of his professional duty that he set to every one of us the example of how a man may devote himself unsparingly to the cause he has to advocate and yet remain in some sense a minister of justice."

It might have been expected that in such company and on such an occasion the guest would have trusted for his speech to the inspiration of the scene and the kindness of his friends. But Clarke abated not one jot of his customary thoroughness. The manuscript of his speech, written out by him in his own hand in preparation, survives, and comparison with the verbatim report of the speech he made, without recourse to notes, shows, except in the case of a syllable here and there, complete identity of form. Nevertheless, it was penned and delivered in sincerity and contains his frank judgment on his career. The speech itself he described as "the most difficult task of all my professional career." He described the eclipse of his political hopes, unrelieved by the compensatory gifts of the judicial ermine; "and so it comes to pass that at the end of these fifty years I finish as I began, as a private member of the English Bar. To some that will look like failure, and indeed of late years I have been fond of quoting the beginning sonnet of Trench, 'Not all who seem to have failed have failed indeed.' But

there has been no failure and I have no reproaches or regrets. If success in life is to be measured in terms of personal happiness, as I think it ought to be, then no man ever had a more successful life than mine. God has blessed me with health in mind and body, and has given me many kind and faithful friends. I have spent my life in the practice of the most interesting profession in the world. I have had golden opportunities of distinction, both in politics and on the forensic side of law, and my political and professional activities have had for their background a domestic life of complete and continuous happiness."

Clarke's forensic career was at an end, and, though it had not led to high office, he had every reason to congratulate himself on its scope and its success. The foundation of that success has been suggested in the quotation from Sir John Simon, the application of which has been illustrated through the pages of this book. Clarke had, of course, the basic equipment of a successful leader at the Bar ; robust health, a clear and tenacious memory, a sufficient comprehension of the Law, the gift of eloquence, and that indefinable skill which senses instinctively how best to present the case so as to secure the sympathy of the tribunal. But many men have combined these qualities without attaining the peculiar position held so long by Edward Clarke. He had, too, the advantage of his personality, with which he was able to invest his cases. He had not the astuteness of a Reading, nor the brilliance of a Birkenhead, nor yet the exuberant and infectious vitality of a Carson, but he satisfied, to an extent never perhaps equalled by any other lawyer, the ideal of contemporary opinion. The Victorian age looked with respect and admiration on his unquestioning acceptance of those high standards of conduct which it prescribed.

His limitations are perhaps more apparent to the present generation, but in his own day they did not at all detract from the esteem in which his real virtues and high-mindedness caused him to be held. It was not that he was in any way unctuous, nor self-consciously virtuous. It did not cost him any effort to live up to the highest Victorian principles and to behave with a degree of chivalry perhaps

beyond that demanded by those principles. His strength and appeal lay not only, and not so much in his chivalry and in his high-mindedness, as in the fact that such conduct came to him naturally and without effort. It was on this account, and without seeking it, that he won the proud sobriquet of the Bayard of the Bar.

The sort of conduct which led him to be invested with this title can be illustrated by the quotation of three anecdotes from a speech by Judge Rentoul:—

“When I had been a couple of years at the Bar, I was briefed in a case with a distinguished Queen’s Counsel. He had never seen me before, and did not even know my name. Our case was a hopelessly losing one, but by great ability displayed on our side (I myself was not allowed to interfere in the case at all) and by some mistake on the other side, at the time of the adjournment of the Court the hopelessly losing case had become for us a certainly winning one. At lunch time my leader said, ‘I will not come back again,’ and I said, ‘Why?’ To this he replied, ‘This case is now won for us, but nobody knows that fact yet. I shall leave it to you to get the credit of winning it. It will do you good as a beginner.’ He left me, and, of course the case was won, and I got the credit for it, and gained a great advantage thereby. I never heard any Queen’s Counsel do a similar thing. One had frequently heard of a leader waiting until the Junior, after a hard struggle, had virtually won the case, then the leader coming into court and encumbering him with assistance.”

The second anecdote is this: “I was once briefed in a police-court case, and applied for a remand. It appeared in the newspapers the following day that the prisoner had been remanded, and I received a note from a great leader that he had noticed that I was appearing for the prisoner, and that, as he had known that prisoner when they were young men together, he would like to come along with me, if I would permit him. I, of course, was only too glad, and he came for four whole days to the police-court, and two days afterwards to the Central Criminal Court, and I was informed through his clerk that he returned briefs to the amount of a thousand

guineas in order to attend to this case. Have any of you old friends of early days who would stick to you as that leader stuck to his friend ? ”

Judge Rentoul's third anecdote was as follows : “ I once appeared as Counsel in the Divorce Court for a co-respondent who was a clergyman. After a long trial the jury found him guilty ; but it was intimated to me that the judge did not agree with the verdict of the jury, and that I ought to go to the Court of Appeal. I informed my unfortunate client of this, but the great difficulty was about money. My junior and I were willing to act in the Court of Appeal without fees, but there were considerable expenses apart from this, and the clergyman was without means. He asked me what could be done, and I said I only knew one man who was likely to rise to the occasion, and give him the money he needed. I sent him to that Queen's Counsel, and he not only gave him the money, but offered to appear for him along with me in the Court of Appeal. He came and conducted a heavy case there, of course, without fee or reward. I have said I would tell you three Bar stories, not one of which could be equalled for the generosity of a very genial barrister, for great loyalty to a companion of former days, and for great charity to an unfortunate litigant. It would be difficult to find any man about whom any one of these anecdotes could be told. The hero of the whole three is with us to-night. It is Sir Edward Clarke.”

Clarke did not do things like this because he thought he ought to ; he did them because it did not occur to him to do otherwise. His reputation for fairness, high-mindedness, and chivalrous conduct became part and parcel of the popular concept of Edward Clarke. It goes without saying that he would not have participated in any proceedings which were in any way tainted with impropriety ; but neither would the great majority of Members of the Bar. It did not, however, follow that all the cases that he undertook were winning cases ; but there was a feeling, widespread if illogical, that to entrust proceedings to such a man would be to invest them with his own characteristics and consequently to assure the Court of the justice of the cause.

It was this feeling about Clarke that gave him his unique position at the Bar. He himself sought no reward for his virtues, for they were not consciously assumed. But it would be wrong in assessing the qualities from which his success derived to exclude the high repute that his character gained for him. For the age in which he lived, and of which he was part, believed in virtue but was not satisfied that it should be its own reward. Virtue like every other good investment, deserved to pay a dividend, and litigious Victorians saw to it that Clarke's character reaped a handsome and tangible dividend.

CHAPTER XIX

CHURCHMAN AND MASON

NO man's biography is complete without reference to his religious life, least of all the biography of a great Victorian. Edward Clarke was throughout his life fundamentally religious, and, though not without his uncertainties on minor points of doctrine and practice, was reassuringly free from those Doubts, which harassed so many eminent Victorians. He invested his religious life with the energy characteristic of him, and his wide religious interest embraced, in addition to personal piety, scriptural scholarship, doctrinal controversy, church building, and the religious life and customs of communities without limitation of geography or race. In the latter part of his life, when his release from the representation of Plymouth in 1900 first gave him leisure for foreign travel, he found ample opportunity to indulge the taste for religious observation. In whatever country he found himself—and they were many over a period of a quarter of a century—the religious customs of the inhabitants exercised a powerful attraction upon him. Those who accompanied him upon his travels knew, or soon found out, that it was an attraction which he could not resist. For instance, he would follow the first funeral which he encountered in a strange land with a persistency which was not always to the taste of his fellow-walker. Rome, St. Petersburg, Cordova, Cettinje and Amsterdam all showed him their various expressions and interpretations of religious belief, and he found all of absorbing interest. Not the least interesting of his foreign visits in this respect was his expedition to Egypt and his inspection of the Pyramids from which he derived an interest in Biblical antiquities which was sustained and fortified by his own researches in later years.

The effect of comprehensive interest, indulged with such

wide and exceptional opportunities, was naturally to broaden the basis of his own religious life and to give him an interest in comparative religions incompatible with a narrow sectarian orthodoxy. This helps to explain the seeming paradox that Edward Clarke was in the course of his long life hailed and condemned both as Low Churchman and High Churchman. In origin, as we have seen, he came of what was virtually Puritanical stock, and his earliest years were guided by the influence of a very strict and uncompromising quality of Low Churchmanship, which was more in evidence a hundred years ago than it is to-day. His natural broad-mindedness, and the expansion of the field of his activities and of his human contacts led him inevitably to wider views. Nevertheless, he continued to rank in the earlier years of his manhood as a Low Churchman, in consequence whereof he was opposed during his candidature at Southwark by the High Church Party and its organ, the *Church Times*. At about this time, however, various influences were at work which made him what was called a High Churchman. Notable amongst these were his constant attendance, while he lived in Russell Square, at St. John's, Red Lion Square, and his not infrequent visits to St. Andrew's, Wells Street. The transference of his political allegiance from Southwark to Plymouth led to another factor of great importance in his religious development ; this was the strong friendship which he formed with the Reverend G. R. Prynne of Saint Peter's, where he worshipped regularly when in Plymouth. Thus by degrees he came to be classified as a High Churchman, and from the period of his building of Saint Peter's Church at Staines until his candidature for Brighton, the Church Association was foremost amongst his critics. Nevertheless, he did not absorb High Church views in their entirety, and during the later years of his political connection with Plymouth, he earned the vigorous opposition of the High Church Party in that town by his active and courageous support of the measure designed to legalise marriage with the sister of a deceased wife.

It was his appointment to the Royal Commission on Ecclesiastical Discipline in 1904 which led to his association

once more with those elements with which he had been previously identified. His long preoccupation with the Law and the habits of mind engendered thereby had bred in him a deep-seated respect for the Law which led him to regard the whole question of Church discipline from a strictly legal point of view. The Commission recommended in its Report that "certain practices, plainly significant of teaching repugnant to the Doctrine of the Church of England and certainly illegal, should be promptly made to cease by the exercise of the authority belonging to the Bishops." Clarke was himself convinced of the existence of these practices by the evidence which he heard, and he hoped that the Bishops would take steps to implement the recommendations of the Report. In fact, little was done and in consequence, being further aggrieved by the experience of a neighbouring parish to Staines in this respect, he determined himself to take action to promote absolute obedience to the Law in matters of Church discipline. To this end he became in 1910 President of the National Church League and subsequently founded the Laymen's Committee. In his later years this work engrossed much of his time and attention, and while his strength lasted he never relaxed his efforts to check the spread of the illegal practices which in his opinion were undermining the whole structure of the Church of England and rendering her position as the Established Church more open to attack. He fought this contest with energy and pertinacity, guided by a quality of leadership which showed its wide discretion in restraining the exuberance of some of those whom he led. His courtesy and fairness in contest were strikingly evidenced after his death by the inclusion in the contributors to his memorial window at Staines of Lord Halifax, himself a leading protagonist on the other side.

It must not be thought, however, that Clarke was at all times an advocate of interference by legislation or otherwise in Church affairs. Especially was this the case after the election of the Liberal Government in 1906. In May of that year he remarked to the Bishop of Oxford: "For the Bishops to ask this Parliament for legislation on Church

matters would be like Daniel reminding the lions that it was nearly lunch-time."

By no means all of his Church work was of a controversial character. He was elected a representative in the House of Laymen and was for many years a regular and energetic Member of that Assembly. Service on various committees made him many friends, including Doctor Hensley Henson, the then Bishop of Hereford. On the scholastic side Edward Clarke became much interested in all that had to do with scriptural translation and interpretation. This interest derived a further and unexpected impetus from a chance meeting in the train. There was living at that time at Virginia Water a well-known Biblical scholar, Doctor C. D. Ginsburg, one of the revisers of the Old Testament. Conversation with Doctor Ginsburg on the way to London opened a new vista for Clarke, who began to take a greater interest in Hebrew literature. This ultimately led him to undertake on his own account the revision of the Prayer Book version of the Psalms.

But perhaps the religious labour which gave him greatest satisfaction was the building of Saint Peter's Church at Staines. When Clarke first went to Staines, Church of England worship in the immediate neighbourhood was restricted to an inadequate iron building. A subscription list was opened to provide a new church, but it did not move with sufficient rapidity to hold out high hopes of an immediate result. Consequently Clarke offered to bear the expenses of erecting the Church himself if the others would acquire a site on the bank of the river which he considered suitable. This was agreed to, and Clarke engaged one of the sons of his old friend, Mr. Prynne, as architect for the erection of the Church and the other as artist for its adornment and enrichment. The actual structure of the Church cost £8,000, and the whole, including organ, stained glass, and peal of bells, was completed for £12,500. The result was stigmatised by some of the Evangelical organs of the times as "A Mass house by the river" but the effect was and remains in fact extremely pleasing and conducive to Christian worship. Here both from "Thorncote" and afterwards

from "Peterhouse" in the Church grounds, Sir Edward and his family worshipped. He was for many years a churchwarden, and regularly read the lessons there. In regard to this practice he had strong views as to the unwisdom of reading some of the passages of the Old Testament as part of a Christian service. Of the various instances in his own life which fortified this view none made a stronger or more abiding impression than the occasion when he attended service on Peace Sunday at Bettws-y-Coed, where he was on holiday in 1919. Here the chosen and singularly inappropriate lesson from the Old Testament was the story of the destruction of the Amalekites by the Israelites, which is specifically stated to be in revenge for wrongs done some hundreds of years before. He was also opposed to the great increase in Lessons from the Apocrypha.

The foundation stone of Saint Peter's, Staines, was laid by Lady Clarke in 1893, and the Church was consecrated by Bishop Temple, then Bishop of London, in the following year. Sir Edward had no voice in the selection of the first two incumbents, and had some disagreement with them in regard to Church matters, indeed one of them ultimately became a Roman Catholic. The third Vicar was his nephew, the Reverend Theodore Marriott, with whom his relations were exceptionally genial. When Mr. Marriott left, Clarke was fortunate in finding as his successor Doctor W. H. Flecker, father of the poet. In him, thanks to the strong bonds of common religious outlook and intellectual endowment, he found an intimate friend and a very pleasant companion. As a result the remaining years of his life, as far as religion went, were passed in harmony and contentment. Such perplexities as did arise he was able to study with that fairness that never deserted him, and with the help of one on whose intellectual equipment and wide reading he could rely. So it was that his religious life, which like the other spheres of his existence had held an ample meed of struggle, ended in spiritual tranquillity based on the bed-rock of a faith which had never failed him.

Clarke always appreciated the ceremonial side of life both in religion and in secular activities. This was one of the

elements in Freemasonry which attracted him. His charitable inclinations and the pleasure that he took in the society of his fellow-men inclined him sympathetically to a body distinguished for its charitable gregariousness. To him Freemasonry was first and foremost religious in its implications. Speaking of British Freemasonry he said : " The work of Masonry is essentially religious. Its teaching has indeed no relation to the doctrines which distinguish and divide the Churches. But it proclaims at every meeting its reverence for the Great Architect of the Universe ; it hymns His praises ; it invokes His blessing upon all its work ; teaches in all its formalities the virtues of brotherly love, charity, and truth ; and the solemn obligations by which its Members are bound together are only special sanctions of the Divine Law which bids us fear God and love our neighbours."

Clarke was twenty-seven when he was initiated into Masonry. This came about through his friendship with a young solicitor named William Johnson, who had married a granddaughter of Nelson and Lady Hamilton. Johnson was secretary at that time of the Lodge Caledonian 134, and naturally it was at this Lodge that Clarke underwent his initiation. This Lodge had agreeable headquarters at the Ship and Turtle in Leadenhall Street, which was, of course, accessible to Clarke from the Temple. The Lodge had a pleasant membership, one at least of whom was useful to Clarke in the furtherance of his professional career. This was Joshua Nunn, at that time United States Consul. Through his friendship Clarke was able to appear several times in those important years when he was building up his practice in the early seventies, as Counsel for the United States Government, in taking evidence on commission in blockade cases arising out of the American Civil War.

The same qualities of industry and address which had contributed to Clarke's rapid rise at the Bar won him speedy promotion in the Caledonian Lodge. Indeed, within four years of his initiation he found himself Master of the Lodge. He was particularly fortunate in his year of office, for 1875 was the year which saw the installation of the Prince of Wales as Grand Master of English Masonry. The scene of this

ceremony was the Albert Hall, which was filled for the occasion with Masters and Past Masters of Masonic Lodges. Clarke had the good fortune to be one of the score of stewards who officiated on this notable occasion. The same honour fell to him again when he was nearly eighty, at the Albert Hall celebrations of the bi-centenary of the foundation of Grand Lodge. Clarke's Masonic activities were necessarily diminished by his election for Plymouth in 1880. The addition of provincial constituency activities to his professional and Parliamentary duties rendered attendance at Masonic functions in London almost an impossibility. He continued, however, to attend a few occasions of special interest, and in 1903 achieved the honourable rank of Past Grand Warden, while in the following year he was the guest of Canadian Masonry at Toronto.

The attainment of the rank of Past Grand Warden of England was partly responsible for the invitation which reached him some years later, asking him to be the founder and first Master of a new Lodge which it was proposed to call the Edward Clarke Lodge. This Lodge was founded, and intended for, brethren who had been associated with the City of London College, of which Clarke was a distinguished alumnus. Clarke consented to be a founder and first Master, and in due course witnessed the consecration of the Edward Clarke Lodge by Sir Edward Letchworth, then Grand Secretary of Freemasons in England. In the first year, that of Sir Edward's Mastership, there were seven initiates, who combined to make him a presentation at the end of his term of office. It was his practice to attend the new Lodge at least once a year, and his speeches at their dinners were said to have been much appreciated by the members of the Lodge that bore his name. The Lodge grew in strength and soon there were annual Ladies' Nights at which Lady Clarke joined her husband in the reception of the brethren and their ladies. The next step was the formation of a Royal Arch Chapter, of which he became a founder. But this he did not attend, for his activity had not exceeded the bounds of what is known as Craft Masonry.

Some years after the War, the Edward Clarke Lodge

had flourished to such an extent that the project was formed of founding a new Lodge to relieve the pressure of numbers. Sir Edward was told of the foundation of the new Lodge, which was called Moorfields Lodge to commemorate its association with the City of London College. This was in 1927, and Clarke wrote to congratulate Mr. Kirkham Hamilton, who was chiefly responsible for the new foundation: "I am much interested and pleased to hear of the foundation of the Moorfields Lodge and think the name very well chosen as recording its association with the College to which I owe so much and with the Lodge which you have served so well. If I should be in England at the date of the consecration I will certainly endeavour to be present. I beg you to convey my hearty good wishes to my many Masonic friends in both Lodges. I wish I could meet them more often but you know all the rest. There are eighty-six reasons." He was not able in fact to be present at the consecration, but expressed interest on hearing that the number allotted to the new Lodge on the register of the Grand Lodge of England was 4,949. He remarked that the registration number made two thirteens, and thirteen had always been his lucky number. He recalled that it had been on February 13th, 1880, that he had first been elected Member of Parliament for Southwark; thirteen years later on February 13th, 1893, he had followed Mr. Gladstone in the great Home Rule Debate; exactly thirteen years after that he had taken his seat for the first time as Member for the City of London on February 13th, 1906. It would not require a very superstitious man to be impressed by the recurrence of this date at such regular intervals, and by the coincidence of the emergence of the lucky number in the registration number of the new Lodge.

Encroaching years and increasing periods of absence from England prevented Clarke from taking an active personal part in Masonic life in these later days. But his interest, especially in the Lodge that bore his name and in the one which had grown out of it, was as keen, and his goodwill as unqualified, as if he had been able himself actively to participate. He himself was not unaware that possibly the

most effective perpetuation of his name might be through the Edward Clarke Lodge. It is not easy to visualise the possibility of the disappearance of the name of Edward Clarke as long as the art of advocacy and the gift of speech retain their admirers where the English tongue is spoken. But it is not altogether fanciful to suppose that, when some of the issues which he debated in Parliament and the causes which he pleaded in the Courts have been relegated to the limbo of forgotten things, his name will be perpetuated and his memory treasured by the brethren of the Edward Clarke Lodge and the congregation of Saint Peter's Church at Staines. These two institutions, devoted, in the closing words of one of his own great perorations "To the divine purposes of good," will keep green the memory of one who was a great Churchman and a great Mason.

CHAPTER XX

GRAND OLD MAN OF THE LAW

THE happy absorption in domestic or trivial matters which commends itself to so many public men on retirement was scarcely possible for those who retired in 1914. The dinner to Clarke preceded by only a few weeks the outbreak of war. That interval had been long enough for Clarke and his wife to betake themselves to Switzerland for a summer holiday. There they were mingling on terms of friendship with people of all nationalities, when the blow fell. This time, although the conflict was of a character immeasurably graver than that of the Boer War, it was accompanied by less personal distress to Clarke himself in at any rate one respect. He was not now besieged by those doubts as to the wisdom of the Government's attitude and the justice of the conflict, from which he had been unable to free himself during the troubled and uneven course of the South African War. In 1914 he was entirely at one with the prevailing sentiment of the nation in a recognition of the inevitability of the War and in a determination to pursue it to a victorious conclusion. His first thought was to consider how best he could be of service to his country. He even had hopes of going out to France, but had to recognise that this was scarcely the medium for an old lawyer of seventy-three. Consequently he wrote to the Prime Minister to ask if he could be of use:—

“ Peterhouse,
Staines.

November 21st, 1914.

My dear Asquith,

I have just returned home, and am writing to offer my services to you in any capacity in which you think I can be useful. . . . As you know I am now quite free from

professional duties and I can undertake to give you my whole time and that for as long as may be required. If there is nothing just at the moment for which you think I am specially fitted do not answer this letter but bear my name in mind and summon me when you please. You and your colleagues have my admiration and sympathy and I should like to be able to help.

Very faithfully yours,

EDWARD CLARKE."

It may be observed as a point of minor interest that Clarke did not in this letter adhere to the convention of addressing the Prime Minister as "My dear Prime Minister." No doubt he thought that the other convention took precedence, by which members of the Bar address each other by their surnames.

Mr. Asquith thanked him for his offer and replied that he would be glad to call upon his services as soon as a suitable opportunity presented itself. Partly, perhaps, as a result of his offer, Clarke received in the following month a letter from Sir John Simon asking him to serve on a Committee which was being set up to investigate and report on the allegations of needless brutality made against the German troops in their invasion of Belgium. Sir John's letter concluded: "The value of this investigation entirely depends upon the known impartiality and authority of those who compose the Committee, and the Government very much hope that you may be disposed to accept this invitation." Clarke did accept and became one of a strong Committee of six, the other five being Lord Bryce, Sir Frederick Pollock, Sir Alfred Hopkinson, Mr. G. M. Trevelyan, and Mr. Harold Cox. Though it was perhaps imperfectly realised at the time, the setting up of this committee has importance as affording an early illustration of the use of propaganda in the Great War. In 1914 propaganda had not, of course, acquired its present status as an integral and often decisive factor in *la guerre totale*.

In the work of this Committee Clarke was soon absorbed, and with characteristic energy suggested that each member

should prepare a memorandum on each branch of the investigation. This suggestion was cordially welcomed by Lord Bryce in a letter in which he wrote : " I doubt whether I should have taken a part in the matter but for the assurance that you would be a member and put your unequalled experience at the disposal of the Inquiry." For some months the Committee worked steadily at the interrogation of witnesses, the sifting of evidence, and the compilation of their report. At the end of April their conclusions were published in the form of a Blue Book, and Sir John Simon wrote to Clarke to " congratulate him most heartily on the completion of his difficult and most unpleasant task."

There is no doubt that the Committee's report did considerable service to the Allied cause both in providing neutral countries with an account of the methods employed, and in helping to stiffen opinion in this country in any quarters where stiffening might be necessary. More congenial to Clarke than this important propagandist duty was his work in connection with the organisation of the Staines Volunteers. This work, too, however, had its distressing aspect, though for different reasons. It was impossible for Clarke to reflect without sadness how many of these young men, in the strength and joy of their manhood, must be taken while an old man like himself was left to continue a life which had already yielded him so much. He did his best to compensate for the seeming injustice of things by the devotion of his service. Amongst other things he followed the Royal example of King George V and forswore all alcohol for the duration of the War. There were in addition anxieties of a more personal nature than the sense of horror and dismay which any sensitive mind inevitably felt at the protracted carnage ; for his son-in-law was again seeing active service with the Army, and his younger son, William, was serving in the Navy.

For those who stayed at home, however, the interests and occupations of civil life were not entirely obliterated by the exigencies of war. From time to time Clarke was involved in activities that owed their origin to happier times. There was, for instance, the matter of his portrait,

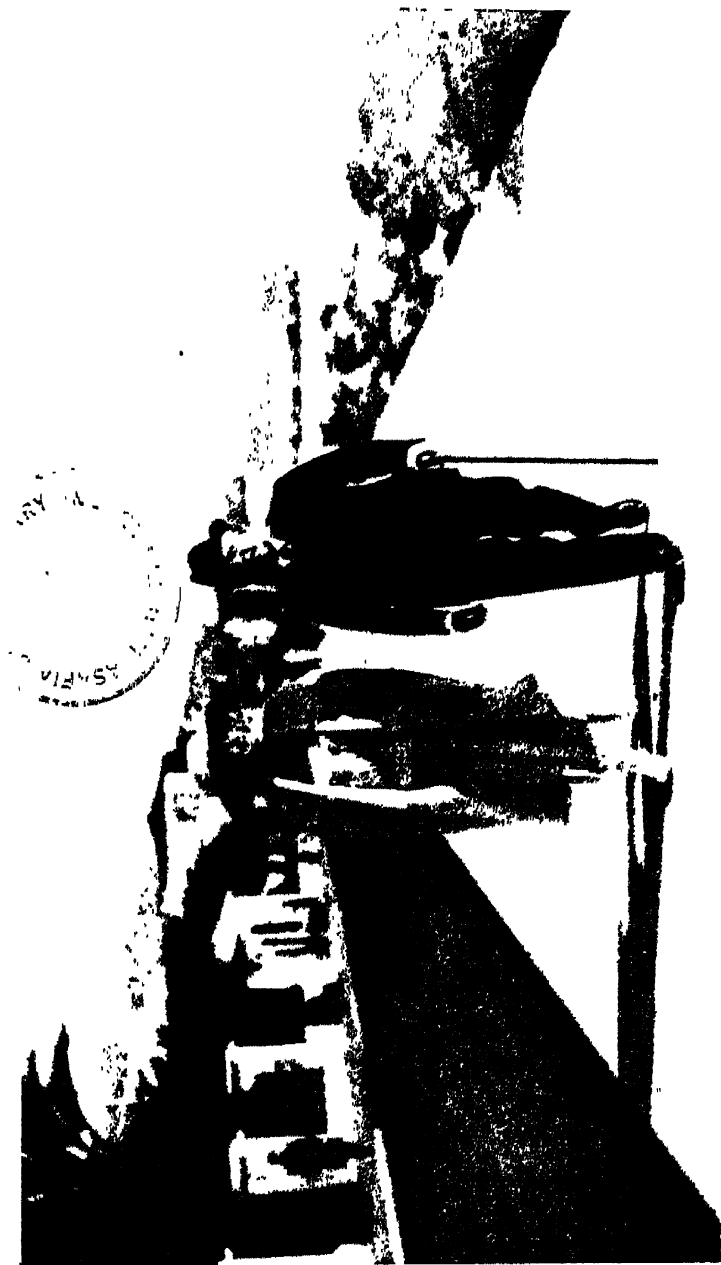
for which the Bar had subscribed shortly before the beginning of war. As soon as hostilities commenced, Clarke placed a strict injunction upon the sponsors of the scheme that nothing further must be done in the matter. In 1915, however, it was pointed out to him that, on account of his injunction, a substantial fund contributed for the portrait was lying idle. Since the subscribers did not wish for its return, there was no proper alternative save to carry out the object for which the money had been subscribed. Thus adjured, Clarke obediently sat for his portrait, which was to be executed by Mr. Solomon, R.A. The portrait was duly completed, and to it was affixed the inscription: "From the Bar of England to Edward Clarke, 1915." A month later Sir Frederick Smith, as Attorney-General and head of the profession, wrote to Clarke: "The picture has now been painted and it falls to me, as the official head of the Bar, to ask you to accept it. Those who come after us will see in it the likeness of an orator of unsurpassed eloquence; of a lawyer who might have been a great judge, but preferred to remain a great advocate; of a politician whose high character and singleness of purpose were acknowledged by all." The acceptance of the picture by Clarke is not quite the end of the story. He himself, unfortunately, did not like the portrait, and decided to present it to the Royal Courts of Justice. No protestations of Lady Clarke as to the unsuitability of such a course could avail to turn him from his purpose. That he persevered in it is evidenced by the position of the portrait hanging—in none too prominent a place—in the Courts, and in June of 1917 Lord Reading, then Lord Chief Justice, wrote to Clarke to express his "sense of pleasure that you should have seen fit to present this unique testimonial of the regard of the Bar for one of its most distinguished members to be placed in the Courts and in the position selected by you. The Bar," continued the Lord Chief Justice with his accustomed suavity, "will indeed be delighted with the portrait of yourself which you have so generously presented to the Profession." Lord Reading's estimate of the opinion of the Bar was more optimistic than accurate, for there

were many who naturally considered that the appropriate place for the portrait was not in the Law Courts but in Sir Edward's own home. With this view Lady Clarke concurred, and indeed the only way in which the retention of the portrait at Staines could have been assured would have been by its presentation in the first place to her instead of to her husband. For, as those who have read thus far will appreciate, Edward Clarke was singularly tenacious of his view once formed, in great things and in small.

The amount of war work which a veteran on the retired list could usefully do was far from satisfying the energetic activity of Edward Clarke. He had determined not to spend his retirement in an idleness which would have been insupportable by a man whose habits and tastes were fashioned by the industry of a lifetime. Deprived of his active participation in the Law and in Politics, he naturally turned to his third love, Literature. He had to his credit a legal textbook on the law of Extradition, some annotations and renderings of the Scriptures, and a sprinkling of articles in the reviews, chiefly on political or legal subjects. With this literary background he resolved, septuagenarian as he was, to turn author. He was resolved always to have some literary work on hand, whether it was only an article or a description of the system of shorthand which he was proud to have invented, or whether it was something more grandiose in the sphere of creative work. In 1915 and 1916 his contributions figured from time to time in the *Cornhill*, then as now one of the leading monthly Reviews in the language. There came to him also, almost inevitably to an old man with a great career behind him and the desire for literature before him, the idea of writing his memoirs. At these he worked methodically and industriously—and nothing that he did was done otherwise—and the completed version was published in 1918. The book obtained some favourable notice, but this was primarily on account of the affection in which his personality was held and the great interest attaching to much of the subject-matter of the story. It cannot with truth be said that as a literary effort the book was very successful, for it was deficient both in

imaginative and in critical quality. A further and more easily avoidable defect lay in the faulty arrangement of the book and in the lack of proportion between the importance of events and the space accorded to them ; thus the long and crowded annals of his legal life, in which the drama of human nature and the conflict between personal desire and social requirements could have been so graphically illustrated, was entirely subordinated to the history of the political exchanges of a bygone age. In this Clarke was only being true to the biographical tradition of the Victorian era, which preferred to be exhaustive rather than selective, and refused to believe that though the importance of political principles and tendencies survives for future generations, the interest of many of the actual controversies themselves is inescapably mortal. There need not, therefore, be matter for surprise in the comparative failure of Clarke's essay in autobiography. There is a popular belief that it is easy for an author to write about himself, a belief sometimes expressed in the axiom that every man is capable of writing one book. This, in fact is no more than dangerous heresy, for the successful autobiography or memoirs demands craftsmanship, not usually to be found in the tyro. If the tyro happens to be an old man with a crowded life for subject-matter, the risk of failure is all the greater in proportion as the task of selection and presentation is rendered the more difficult. Clarke, therefore, would have required quite exceptional literary qualities, almost on a par with his qualities as an advocate, to have made such a volume, written in such circumstances, an outstanding success.

After the War, Clarke continued his literary pursuits, which, together with Church matters, were fast becoming his main interest outside things purely domestic and personal. He did not, however, abandon interest in the twin activities of Law and Politics, which had engaged the period of his active life ; but in the nature of things his interest in these was now merely that of an informed spectator. He watched with a kindly eye the rise to high judicial office of men who had counted it an honour to appear as his junior in the great days at the beginning of the century. If other links



SIR EDWARD AND LADY CLARKE AT MENTON

with the Bar were wanting, his son Percival was rising steadily in the practice of criminal law, although William had not returned to the Bar at the end of the War, preferring to enter the service of the Admiralty. Clarke, of course, maintained his close interest in the affairs of Lincoln's Inn, of which he remained a Master of the Bench, and from time to time visited the Law Courts, where his presence was described by Lord Coleridge, son of his old friend who had tried the Baccarat Case thirty years before: "I fancied I perceived the other day a veteran not visible to the official eye, not at all War-worn, venerable but not senile, in the Court below me, upon whom age seemed but lightly to have laid his hand." His political associations he kept alive by his periodical visits to the Carlton Club, where his mutton-chop whiskers and formal frock-coat were a visible reminder to Coalition Unionists of the early 1920's of the Conservatism of Beaconsfield and Salisbury.

Clarke's distinctive appearance, in fact, made him a figure easily recognisable by all who had at any time come in contact with him. Good as his memory was, he sometimes found it difficult in later years to identify some who greeted him. The most courteous of men, this occasional failure caused him distress. Particularly to women his courtesy was never failing. On one occasion a lady, introduced to him at a first night, said: "Oh, Sir Edward, people say I am so like Lady — (a noted beauty). What do you think?" "Well," replied Sir Edward, "I never saw Lady —, but I hope for her sake you are." Again, at the party for his ninetieth birthday, an effusive lady embraced him by way of congratulation. Lady Clarke, somewhat surprised at this manifestation, inquired who the lady might be, to which Sir Edward replied: "I have not the slightest notion, my dear, but I found it extremely enjoyable."

Soon after the completion of his memoirs, Clarke, for all his eighty years, embarked upon a task which drew its inspiration no less from political loyalty than from literary ambition. Before the War he had applied to the firm of John Murray asking to be entrusted with the official Life

of Disraeli when the work had only reached its third volume on the death of Mr. Monypenny. On discovering later that Mr. Buckle, the Editor of *The Times*, was also anxious to be responsible for the completion of the work, he withdrew his application in the latter's favour. Mr. Buckle, as all the world knows, wrote three and a half volumes to complete the remaining six volumes of the official Life of Disraeli. While fully appreciating the comprehensiveness and literary merit of the Official Life, Clarke considered—and the number of volumes published on Disraeli since the War confirms the correctness of his view—that many people would like a one-volume “life” of that statesman. He, therefore, with the goodwill of Mr. Buckle and the firm of John Murray, set about concentrating his veteran energies on the compilation of such a volume. It was in every sense a labour of love, since to him the memory of Disraeli had remained green as the prototype of Tory excellence. He had met Disraeli just often enough to receive a personal impression of his subject, without having enjoyed an acquaintance close enough to tempt him to stress the personal side of the narrative. He was sufficiently conversant with the events of the period to enable him to paint the background in faithful colours, without having taken enough part in them to be led into giving undue weight to those in which he had personally shared at the expense of that which he knew only from hearsay or at secondhand. The result was a work far more satisfactory than his own memoirs, a biography which was accorded a very favourable reception both by the Press and by those with a special knowledge of the subject of the book. Mr. Buckle wrote to congratulate Clarke on the work, and no less an eminent a critic than Sir Herbert Warren, the celebrated President of Magdalen College, Oxford, described it as “a wonderfully fresh and vigorous portrait to come from this veteran hand—a Titian among biographies.” Warm and vigorous, and at the same time faithful and objective, it remains the best and most enduring achievement of Clarke in literature.

At the time of the publication of his work on Disraeli,

Clarke was in his eighty-sixth year. It may be that it is an unprecedented thing for a man to write his first book at the age of seventy-seven and his last at the age of eighty-five. But it was not only in literature that Clarke's indomitable vigour refused to retreat before the imperious advance of age. In 1925 he was asked, as the senior Bencher of Lincoln's Inn, to propose the toast of the guest at the dinner given to Lord Oxford and Asquith in honour of his elevation to the peerage. There were no reporters present, but Lord Merrivale, then President of the Probate, Divorce, and Admiralty Division, offered to report the speeches of Clarke and Lord Oxford himself. There was a peculiar fitness in this because forty-five years earlier, the future Lord Merrivale, then Henry Duke, of the *Western Morning News*, had reported Clarke's series of political speeches made in that year in the West Country ; and it had been due to Clarke's encouragement and help that he had been called to the Bar, thus taking the first step towards the high office that awaited him. From the transcript of Lord Merrivale's shorthand notes it appears that Clarke's speech was couched in his old style of vigour and eloquence ; and those who heard it testified that it was delivered with a robustness which took them back to the days when he was the foremost advocate in the Courts. His opening was peculiarly felicitous : " Lord Oxford and Asquith, I take an unusual course in addressing to you the first sentence of my speech. I speak to both of you ; to the Oxford of public honour and the Asquith of private friendship." It is perhaps worth quoting the sentiments which his speech evoked in Lord Oxford : " As you listened to him you must have wondered why he has ever left the active practice of the Bar. I see a number of very distinguished members of the profession here to-night, and they must be thankful to have no longer to contend with that supreme master of their own art. . . . Fairness of statement ; a subtle and indefinable power of persuasiveness, what I once some years ago, speaking of him, called light without excessive heat ; and yet with the fervour which never passed the bounds either of good taste or of good sense ; combining to a degree which I do not

think in a long experience I have ever known surpassed, and certainly rarely equalled, a most scrupulous regard for the highest standards of professional honour with a dexterity and resourcefulness which were the admiration of those who were fortunate enough to have him as their counsel, and the despair of those who were unfortunate enough to be opposed to him, both in the strategy and the tactics of the forensic field." This was high tribute from one whose own services to the law and politics had been crowned with so rich a reward.

But occasions such as this were becoming increasingly less frequent. Clarke's life was beginning to enter those cloistered walks of serenity reserved for happy old age. He still maintained all his interests, but as spectator and reader, rather than actor and writer. He spent much of his time in his library at Peterhouse, surrounded by the books which he had always loved but for which he had not always had leisure, with Disraeli's favourite clock ticking out the remaining hours of a life unsullied by regret.

He still made occasional public appearances and in Staines he was naturally a figure. At the Royal Garden Party at Buckingham Palace, Thursday, July 22nd, 1926, some visitors were interested in a group of old men who were in lively and even merry conversation. Lord Mersey, unable to walk, was in a bath-chair, and three of his closest friends were standing round him. Prebendary Carlile, of the Church Army, was, at eighty years of age, the youngest of the group; Sir Edward Clarke was eighty-five; Lord Mersey himself was within a few weeks of his eighty-seventh birthday, and Admiral Fremantle was ninety. Such a quartette of veterans is not often seen. The average age was just over eighty-five. On Clarke's birthdays and when he attended the opening of the Courts and other legal ceremonies modern journalists discovered him with joy, and it was not long before he, who had for many years borne the proud title of "The Bayard of the Bar" on account of the strength and chivalry displayed in his forensic contests, became "The Grand Old Man of the Law" and an almost legendary figure to the younger generation who knew of his achieve-

ments only from hearsay. His axiom as to success at the Bar was widely quoted. "To succeed at the Bar a man requires three things : he must be very ambitious, very poor, and very much in love." In his youth Edward Clarke had all these "advantages," and his career at the Bar was superlatively successful. But the proposition remains unproved and the recipe incomplete. These three prerequisites are within the reach of nearly all, but success at the Bar is not ; and it may be that there are young men, in whose case the theory has proved unfounded, who feel reproachful to the shade of Edward Clarke.

Everything contributed to make him a legendary figure ; his appearance, straight out of a Victorian print, the long span of his life in the course of which his contemporaries had dropped out one by one, and the great contests and historic scenes which the mention of his name instantly conjured to the mind. But he did not experience that loneliness which is so often the lot of the legendary figure. The personal companionship of his wife, with whom he had had nearly half a century of perfect union, and the spiritual peace which came from his deep religious faith, ensured him that peace of mind and contentment which are Nature's greatest gifts to old age.

As he drew near his ninetieth birthday he knew that the slow process of dissolution was at work. His memory, on which for the whole of a long life he had been able to place implicit reliance, began to fail him. At the dinner given to Lord Justice Banks on his retirement he spoke for a few minutes with his old vigour unabated, but lost the thread of his discourse later and was unable to conduct it to its proposed conclusion. Even sadder was the occasion of his last visit to the Temple, where he had gone to call on his son Percival. There, in the Courts and Squares where he had reigned supreme, he lost his way, and had to be guided to the familiar Chambers. Distressed as he was by this, the old man remained indomitable, and in the photograph taken of him and Sir Percival on this occasion, the bearing is as erect, the eye as undimmed and the aspect as uncompromising as in the days when he was at the height of

his powers. To weakness and infirmity he made no concessions save those that were wrung from him by a Nature jealous of her prerogative. Thus armed with resolution, he passed his ninetieth birthday, on which he was honoured by his fellow citizens of Staines. To them he made a speech of gratitude, and the day finished leaving him very tired but very happy. Quietly the spring of that year wore on, and he was ready for the end. Towards the end of April he had a vivid dream symbolising the unity and ultimate identity of all forms of the Christian Religion. A few days later very peacefully he passed away.

Had he cared to do so, he could in those last hours have looked back upon the crowded memories not only of forensic triumphs and political controversy, but on the number of lives and causes to which his efforts had helped to bring succour and support. He could have smiled at the memory of disappointments which had loomed so large, for he might have quoted with justification as regards himself the opening line of the sonnet :—

“ Not all who seem to fail have failed indeed,
Not all who fail have therefore worked in vain.”

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